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Supreme Court of the United States

OCTOBER TERM, 1962

No. 112

**JAMES H. GRAY, AS CHAIRMAN OF THE GEORGIA
STATE DEMOCRATIC EXECUTIVE COMMITTEE,
ET AL., APPELLANTS,**

vs.

JAMES O'HEAR SANDERS.

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF GEORGIA**

FILED MAY 11, 1963

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[fol. 1]

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF GEORGIA,
ATLANTA DIVISION**

Civil Action No. 7872

JAMES O'HEAR SANDERS, Plaintiff,

versus

JAMES H. GRAY, as Chairman of the Georgia State Democratic Executive Committee; GEORGE D. STEWART, as Secretary of the Georgia State Democratic Executive Committee; THE GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE; THE GEORGIA STATE DEMOCRATIC PARTY; and BEN W. FORTSON, JR., as Secretary of State of the State of Georgia, Defendants.

COMPLAINT—Filed March 27, 1962

To the Honorable, The Judges of the District Court of the United States for the Northern District of Georgia:

This action is a civil case brought under Section 28, United States Code 2201 and 28 United States Code, 2202, seeking relief by declaratory judgment; under 42 United States Code 1983, seeking interlocutory and permanent injunction and equitable relief for the deprivation of constitutional rights, privileges and immunities. Jurisdiction of this court is founded upon the provisions of Section 28, United States Code 1343. This is a proper case for determination by a Bench composed of three judges, as provided in 28 United States Code 2281, inasmuch as it seeks interlocutory and permanent injunction to restrain the enforcement, operation and execution of statutes of the State of Georgia by restraining an officer thereof, the Secretary of State, from complying with the provisions of such statutes.

[fol. 2] Statement of the Complaint

1.

Petitioner is James O'Hear Sanders, a citizen of the United States and of the State of Georgia, and a resident of Fulton County, which said County is located within the Atlanta Division of the Northern District of Georgia.

2.

Defendants are George D. Stewart, who is a resident of Fulton County, residing within the Atlanta Division of the Northern District of Georgia, and James H. Gray, who is a resident of Albany, Dougherty County, Georgia, residing within the Albany Division of the Middle District of Georgia, and said defendants are subject to the jurisdiction of this Court.

3.

Defendant, James H. Gray, is presently Chairman of the Georgia State Democratic Executive Committee, herein after called Defendant Committee, and the defendant, George D. Stewart, is presently the Secretary of said Committee—this action being brought against them in their official capacities, for relief against them and their successors in office.

4.

Defendant Committee is an unincorporated association composed of persons residing throughout the State of Georgia and is the governing body of the Defendant Democratic Party of Georgia (hereinafter referred to as Defendant Party). Defendant Party is an unincorporated association composed of thousands of residents residing throughout the State of Georgia.

5.

The Defendant Committee is recognized under pertinent statutes of the State of Georgia as the governing body of [fol. 3] Defendant Party, and is charged by such statutes

with certain duties and responsibilities, as more fully hereinafter set forth.

6.

This action is brought against Defendant Committee and Defendant Party for the purpose of enforcing certain constitutional rights, privileges and immunities of the Plaintiff. By reason of the number of persons comprising defendants Committee and Party, it is impracticable to serve each such person individually, but service upon each of the two said defendants may be made by serving the Chairman and Secretary thereof, as hereinabove set forth, and said defendants will be adequately represented in this action by and through its aforesaid executive officers.

7.

Defendant Ben W. Fortson, Jr., is a resident of Wilkes County, Georgia, but maintains a residence in Fulton County in the Atlanta Division of the Northern District of Georgia. Said defendant is presently Secretary of State of the State of Georgia.

8.

Plaintiff is within that class of persons qualified as electors within the meaning of Article II, Section I, paragraphs I-IV of the Constitution of Georgia (Section 2-701 through 2-704, Georgia Code Annotated), said constitutional provisions appearing in Exhibit "A" hereto.

9.

Plaintiff is qualified to vote in primary and general elections in Fulton County, Georgia, is a member of the Democratic Party of Georgia, intends to vote in the Democratic Primary election to be held within the State of Georgia in 1962, and intends to support the nominees of such Primary Election in the General Election to be held [fol. 4] in Georgia in 1962.

10.

Defendant Party is planning to hold a statewide primary election in Georgia on September 12, 1962 for nomination of candidates for the United States Senate and the following state offices: Governor, Lieutenant Governor, Secretary of State, Justice of the Supreme Court, Judge of the Court of Appeals, Attorney General, Comptroller General, Commissioner of Labor and Treasurer.

11.

Defendant Committee, as the governing body of Defendant Party, and in accordance with the provisions of Section 34-3212, Georgia Code Annotated, is planning to supervise the holding of said primary election, to tabulate and consolidate the ballots cast therein, and to certify, in accordance with Section 34-3215.1, Georgia Code Annotated, to the defendant, Fortson, as Secretary of State, the names of persons determined by said Committee to have been nominated in said primary election. The statutes referred to hereinabove are set out in Exhibit "B".

12.

Defendant Fortson, as Secretary of State, in accordance with the provisions of Section 40-601(7) Georgia Code Annotated (set out in Exhibit "C") is intending to furnish to the several ordinaries of the State of Georgia official ballots and election supplies, and to certify to said ordinaries, respectively, the names of candidates for the aforesaid offices nominated in the Democratic Primary election.

13.

Under the provisions of Section 34-1904 Georgia Code Annotated (set out in Exhibit "D") the several ordinaries will submit such ballots and the names of those candidates [fol. 5] so certified by Defendant Fortson, as Secretary of State, to the electors of the State of Georgia for their choice in the general election that will be held in Georgia for the aforesaid statewide offices on the Tuesday after the first Monday in November, 1962.

14.

Nomination as candidate for United States Senator and for the aforesaid for statewide offices by Defendant Party is the equivalent of election to such office in Georgia and no candidate for any of the aforesaid offices other than the nominee of defendant Democratic Party has been elected to office since 1872.

15.

Petitioner contends that the means of tabulating the popular vote and, specifically, the means of tabulating the vote which he as a voter in Fulton County intends to cast in the forthcoming Democratic Primary election (as governed by the provisions of Section 34-3212 Georgia Code Annotated) is arbitrary, discriminatory and unconstitutional, in that the intended acts of defendants in compliance with such statute is a deprivation of his constitutional rights and a denial to him of the equal protection of the laws, all as more fully hereinafter set forth.

16.

The means of tabulating the votes to be cast in the forthcoming Democratic Primary election, including the vote to be cast by petitioner, is known as the County Unit System, being incorporated in the statute law of this State by the Act of 1917 (Georgia Laws 1917, pages 183 through 189, codified as Sections 34-3213 through 34-3218 Georgia Code Annotated), said act being popularly referred to as the Neill Primary Act. The salient provisions thereof are as follows:

[fol. 6] " . . . Candidates for nominations to the above named offices who receive, respectively, the highest number of popular votes in any given County shall be considered to have carried such County, and shall be entitled to the full vote of such County on the County Unit basis, that is to say, two votes for each representative to which such County is entitled in the lower House of the General Assembly . . . " (Georgia Code of 1933, Section 34-3212, codified from Georgia Laws 1917, pp: 183-189).

"... the majority of the County Unit vote shall be the determining factor for the nomination of United States Senator and Governor and ... the plurality of the County Unit vote shall be the determining factor for the nomination to all other offices named in Section 34-3212." (Georgia Code of 1933, Section 34-3213, codified from Georgia Laws, 1917, pp. 183-187).

The composition of the lower House of the General Assembly of Georgia is fixed constitutionally as follows:

"The House of Representatives shall consist of representatives apportioned among the several counties of the State as follows: To the eight counties having the largest population, three representatives each; to the thirty counties having the next largest population, two representatives each; and to the remaining counties, one representative each."

(Article III, Section III, paragraph I of the Constitution of Georgia of 1945, codified as Section 2-1501 Georgia Code Annotated.)

Accordingly, under the County Unit System, the eight largest counties by population have six unit votes each; the 30 next largest by population have four unit votes each; and the remainder, being 121 in number, have two unit votes each.

17.

Fulton County, wherein petitioner resides and intends to cast his vote in the forthcoming Democratic Primary, is the most populous county in Georgia, having according to the 1960 United States Census a population of 556,326.

18.

According to the aforementioned source, the total population of Georgia in 1960 was 3,943,116. The residents of Fulton County comprised in 1960 14.11% of the total population of the State of Georgia.

[fol. 7]

19.

Under the County Unit System, the six unit votes of Fulton County constitute 1.46% of the total of 410 unit votes of all 159 counties of Georgia, or one-tenth Fulton County's percentage of statewide population.

20.

Echols County is the least populous county in Georgia, having a population in 1960 of 1,876 or, stated by percentage, .05% of the State's population in 1960.

21.

Under the County Unit System, the unit vote of Echols County is .48% of the total unit vote of all counties in Georgia, or ten times Echols County's statewide percentage of population.

22.

DeKalb County is the second most populous county in the State of Georgia, having a population in 1960 of 256,782, representing 6.51% of the total population of Georgia, and having a unit vote of six, equal to that of Fulton County.

23.

Petitioner's vote, to be cast in Fulton County, is drastically diluted by tabulation and consolidation of votes under the County Unit System, as illustrated by the following examples:

A. The 1,876 residents of Echols County (1960 census) have two unit votes, or $\frac{1}{3}$ of the unit votes of the 556,326 residents of Fulton County (1960 census). One unit vote in Echols County represents 938 residents, whereas one unit vote in Fulton County represents 92,721 residents. Stated differently, one resident in Echols County has the equivalent influence in the nomination of candidates in the Democratic Primary under the County Unit System of 99 residents in Fulton County.

[fol. 8]

24.

Attached to this complaint are Exhibits "F" and "G", disclosing the population of each county in Georgia for the years 1920, 1930, 1940, 1950 and 1960, the respective unit votes of each county, and a figure designated "disparity factor," representing the weight, according to population, of one unit vote in each county as compared to one unit vote in Fulton County; and Exhibits "H" and "I", disclosing the "disparity factor" for each county in Georgia as related to the votes cast in the most recent Democratic primary election held in 1958, in which a governor was nominated.

25.

Since the enactment of the Neill Primary Act in 1917, the population of Fulton County has steadily increased comprising of the total population of the State of Georgia 8.0% in 1920; 10.9% in 1930; 12.5% in 1940; 13.7% in 1950; and 14.11% in 1960. Notwithstanding such increase, Fulton County has been accorded but 1.46% of the unit vote in each statewide primary election held by the Defendant Democratic Party.

26.

The cited increase in population of Fulton County is indicative of similar increases in population of the urban communities of the State of Georgia since passage of the Neill Primary Act in 1917, as evidenced by the combined populations of the eight largest counties of Georgia according to each decennial United States Census since 1920 as follows:

Year	Total Population of State of Georgia	Combined Population of Eight Largest Counties of Georgia (6 unit vote counties)	Proportion of Population of Eight Largest Counties to Total Population
1920	2,895,832	620,668	21%
1930	2,908,506	787,305	27%
1940	3,123,723	938,958	30%
1950	3,444,578	1,227,161	36%
1960	3,943,116	1,626,734	41.35%

[fol. 9] Accordingly, although the eight six unit counties comprise among themselves 41.35% of the population of Georgia, their total of unit votes (48) constitutes but 11.7% of the entire unit votes of the State of Georgia.

The urban population of the State of Georgia has continuously increased since passage of the Neill Primary Act in 1917, as evidenced by the following:

Nature of Population	1920	1930	1940	1950	1960
Urban	25.1	29.6	34.0	45.3	55.3
Rural	74.9	70.4	66.0	54.7	44.7

(Source: United States Census, "Urban Population" was defined, prior to 1950, as those inhabitants of incorporated areas of 2,500 or more; current definition eliminates the distinction between incorporated and unincorporated areas.)

The disparity created by the County Unit System will continue to increase with the increase of urban population in the State of Georgia.

1

27.

The effect of the County Unit System is to reverse all votes in any one county cast against a candidate receiving the plurality of votes in such county, and to accord in favor of such candidate all votes adversely cast. For example, in gubernatorial primary of 1954, the successful candidate received 36.3% of the total popular vote, said percentage tabulated and consolidated under the County Unit System producing 73.6% of the total unit votes of the several counties. The said candidate received 25% of the votes cast in Fulton County in said primary, which percentage constituted a plurality. Accordingly, all six of Fulton County's unit votes were tabulated in favor of said candidate, notwithstanding the fact that 75% of the electors of Fulton County had cast votes adverse to his candidacy.

[fol. 10]

28.

Petitioner has no effective recourse against the dilution of his vote and against the cited disparities and inequali-

ties of the County Unit System in the nature of legislative action, inasmuch as the composition of the lower House of the General Assembly of Georgia is the basis upon which the County Unit System is patterned (paragraph 17, supra) and it cannot reasonably be anticipated that the members thereof, exercising the same degree of control over the affairs of the House of Representatives as their respective counties exercise in the nomination of candidates to statewide offices in primary elections, will be inclined voluntarily to diminish their own political influence or that of their constituents.

29.

The disparity created by the County Unit System between the weight and influence of the vote of petitioner, as a resident of Fulton County, and the votes of others throughout the State of Georgia constitutes the deprivation of his right of franchise and the denial of his right to vote. The County Unit System abridges the right of petitioner and others in Fulton County to vote, while it increases the weight and influence of votes cast in every other county of the State. This disparity, the result and effect of statutes of the State of Georgia, is the denial to this petitioner by the State of Georgia of equal protection of the laws.

30.

*The provisions of Sections 34-3212 through 34-3218 Georgia Code Annotated, governing the counting, tabulation and consolidation of votes cast in primary elections within the State of Georgia on the County Unit basis, and those provisions thereof requiring the certification and publication of the names of parties deemed nominees on the basis of the County Unit System, are unconstitutional, void and [fol. 11] violative of the following provisions of the Constitution of the United States:

(a) Section 1 of the 14th Amendment thereto, in that, as applied to a primary election for nominees for United States Senator or any of the aforesaid State offices they constitute the denial by the State of Georgia to persons

within its jurisdiction and to this plaintiff of equal protection of the laws.

(b) Said County Unit System provisions, as they are applied to primary elections to nominate candidates for United States Senator, are in violation of the 17th Amendment to the Constitution of the United States, which guarantees that the Senators from each State shall be "elected by the people thereof."

31.

Said Sections 34-3212 through 34-3218, Georgia Code Annotated, as applied to primary elections for nomination of United States Senator and statewide offices constitute discrimination against this petitioner and places him in a class of persons discriminated against—all without justifiable or reasonable basis. Said statutes of the State of Georgia create arbitrary and unconstitutional classifications among voters of the State based solely upon geographic location of residents and character of domicile (i.e., urban or rural) and deprive this petitioner, as a resident of a populous urban county of his basic and constitutional rights.

32.

The provisions of Sections 34-3212 through 34-3218, Georgia Code Annotated, governing the counting, tabulation and consolidation of votes on the County Unit basis, as applied to primary elections, is violative of that provision of Section 1 of the 14th Amendment of the Constitution of the United States that no State shall deprive any person of "... liberty or property without due process of law"—the dilution, diminution and abridgement by virtue of said statutes of plaintiff's vote and of his right to vote con-
[fol. 12] stituting deprivation of plaintiff's liberty and property by the State of Georgia without due process of law.

33.

Petitioner brings this action to prevent defendants from carrying out the unconstitutional and void provisions of

the County Unit System by complying with the provisions of Section 34-3212 through 34-3218, Georgia Code Annotated, in the forthcoming Democratic Primary election, and shows to the Court that unless defendants be restrained by interlocutory and permanent injunction from acting in accordance with said provisions, and unless said provisions be declared by this Court to be unconstitutional and void, petitioner's basic and constitutional right to vote will be abridged and denied him. This section is brought by petitioner on his own behalf and on behalf of others similarly situated.

34.

Petitioner is without adequate remedy at law, inasmuch as the Supreme Court of Georgia in the case of *Cor v. Peters, et al.*, 208 Ga., 498 (Appeal dismissed, 342 U.S. 936; 96 L. ed., 697 (1951) has held that an action at law for damages will not lie in favor of one aggrieved by reason of the application of the County Unit System.

35.

Plaintiff is moving at this time in order to prevent the use of the County Unit System in the forthcoming primary by asserting its constitutional invalidity in sufficient time to prevent this bill from becoming moot because of the prior action by the defendants in conformity with the statutes establishing and enforcing the County Unit System as herein pled. If the equitable jurisdiction of this Court is not invoked within time, or unless this plaintiff's rights are not declared in advance of the holding of the primary, the plaintiff's constitutional rights will have been abridged and under the previous decisions of the Supreme Court of the United States, he will have no equitable remedy or redress.

[fol. 13] Wherefore, petitioner prays:

(a) That this, his bill in equity for interlocutory and permanent injunction and petition for declaratory judgment, be sanctioned and ordered filed;

(b) That defendants be required to show cause on a stated date why the relief herein prayed for should not be granted;

(c) That a Court consisting of three judges be convened at the earliest possible date to hear and determine the matters herein;

(d) That interlocutory and permanent injunction issue against each of the defendants, restraining and enjoining them as follows:

1. That the Defendant Party be restrained and enjoined from tabulating ballots cast in the forthcoming Democratic Primary election to be held September 12, 1962 and in any primary election hereafter conducted by said Defendant Party on the basis of the County Unit System; that it be restrained and enjoined from selecting any nominee on the basis of ballots cast in any primary election hereafter held on the County Unit System; and that it be enjoined and restrained from publishing or certifying, by and through its officers or executives, the nomination of any candidate for the aforesaid state offices on the basis of the County Unit System;

2. That the defendants, James H. Gray and George D. Stewart, in their representative capacities as officers of the defendant Committee, and their successors in office, be enjoined and restrained from conducting or governing any primary election on the County Unit basis, from supervising the tabulation and consolidation of votes cast in any primary election on the County Unit basis, from certifying and publishing the names of any candidates deemed nominated in any primary election conducted on the County Unit System, and from giving force and effect to those provisions of the said Neill Primary Act shown herein [fol. 14] to be void and unconstitutional.

3. That defendant, Ben W. Fortson, Jr., as Secretary of State, and his successors in office, be enjoined and restrained from certifying to the several ordinaries of the State of Georgia the names of any candidates for nomination to statewide offices who shall have been nominated or

deemed selected pursuant to the tabulation and consolidation of votes cast in any primary held by Defendant Party under the County Unit System; and that he be further enjoined and restrained from furnishing to the several ordinaries of the State of Georgia official ballots and other election supplies whereon nomination under the County Unit System is recognized.

(e) That the Court issue its declaratory judgment holding the aforesaid provisions of Sections 34-3212 through 34-3218, Georgia Code Annotated to be void and unconstitutional insofar as the cited sections provide for the nomination by Defendant Party of any candidate for United States Senator or statewide office under the County Unit System;

(f) Petitioner further prays for such additional relief as shall to equity and justice appertain.

Heyman, Abram, Young, Hicks & Maloof, By:
Morris B. Abram, By: Maurice Maloof.

[fol. 15] *Duly sworn to by James O'Hear Sanders, jurat omitted in printing.*

[fol. 16]

EXHIBIT A TO COMPLAINT

2-701. Paragraph I. Elections by ballot; registration of voters.—Elections by the people shall be by ballot, and only those persons shall be allowed to vote who have been first registered in accordance with the requirements of law.

2-702. Paragraph II. Who shall be an elector entitled to register and vote.—Every citizen of this State who is a citizen of the United States, eighteen years old or upwards, not laboring under any of the disabilities named in this Article, and possessing the qualifications provided by it, shall be an elector and entitled to register and vote at any election by the people: Provided, that no soldier, sailor or marine in the military or naval services of the United States shall acquire the rights of an elector by reason of being stationed on duty in this State.

2-703. Paragraph III. Who entitled to register and vote.—To entitle a person to register and vote at any election by the people, he shall have resided in the State one year preceding the election, and in the county in which he offers to vote six months next preceding the election.

2-704. Paragraph IV. Qualifications of electors.—Every citizen of this State shall be entitled to register as an elector, and to vote in all elections in said State, who is not [fol. 17] disqualified under the provisions of Section II of Article II of this Constitution, and who possesses the qualifications prescribed in Paragraphs II and III of this Section or who will possess them at the date of the election occurring next after his registration, and who in addition thereto comes within either of the classes provided for in the two following subdivisions of this paragraph.

1. All persons who are of good character and understand the duties and obligations of citizenship under a republican form of government; or

2. All persons who can correctly read in the English language any paragraph of the Constitution of the United States or of this State and correctly write the same in the English language when read to them by any one of the registrars, and all persons who solely because of physical disability are unable to comply with the above requirements but who can understand and give a reasonable interpretation of any paragraph of the Constitution of the United States or of this State that may be read to them by any one of the registrars. (Georgia Code Annotated, Sections 2-701 through 2-704, Article II, Section 1, Paragraphs I-IV, Constitution of the State of Georgia.)

[fol. 18]

EXHIBIT B TO COMPLAINT

34-3212. County unit vote.—Whenever any political party shall hold primary elections for nomination of candidates for United States Senator, Governor, Statehouse officers, Justices of the Supreme Court, and Judges of the Court of Appeals, such party or its authorities shall cause all candi-

dates for nominations for said offices to be voted for on one and the same day throughout the State, which is hereby fixed as the second Wednesday in September of each year in which there is a regular general election. Candidates for nominations to the above-named offices who receive, respectively, the highest number of popular votes in any given county shall be considered to have carried such county, and shall be entitled to the full vote of such county on the county unit basis, that is to say, two votes for each representative to which such county is entitled in the lower House of the General Assembly. If in any county any two or more candidates shall tie for the highest number of popular votes received, the county unit vote of such county shall be equally divided between the candidates so tying. All such county unit votes shall within 10 days after such primary be accurately consolidated by the chairman and secretary of the State committee of the political party holding such primary, and published in a newspaper published at the Capital, within three days after the completion of the consolidation, certified under the hands and seals of said chairman and secretary; and the candidates for said offices, respectively who shall receive a majority of all the county unit votes, throughout the entire state, upon the basis above set forth, shall be declared by the State convention of the party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominees of such party for the above-named offices, respectively, and it shall be the duty of the State executive committee elected [fol. 19] or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the names of all such successful candidates shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidates shall be considered, deemed and held as the duly nominated candidates of such party for the offices named: Provided, that in the event there are only two candidates for any particular office referred to in this section, and it shall appear, after the consolidation of all of the county unit votes throughout the State, that said candidates have received an equal number of county

unit votes, the one who shall have received a majority of the popular votes shall be declared by the State convention of party holding such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominee of such party for such office; and it shall be the duty of the State executive committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the name of such successful candidate shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidate shall be considered, deemed and held as the duly nominated candidate of such party for the office named: provided, further, that if no convention of such party shall be called or held, the declaration of the result shall be made in such manner as may be prescribed by the State committee or other authority of such party.

34-3213. Second primary election.—In the event that, after such consolidation of all the county unit votes throughout the State, it shall be made to appear that in the contest for any one or more of said offices, no candidate has received a majority of all of the county unit votes throughout the [fol. 20] State, upon the basis as above set forth, and it shall further appear that there are more than two candidates for any one or more of said offices, such political party shall hold a second primary election throughout the State on the first Wednesday in October following such first primary election; and in such second primary election only the two candidates ascertained to have received the highest number of county unit votes at the first primary election for any particular office shall be voted for; and the vote shall be consolidated and the result declared and certified within 10 days after said second primary election, and published in a newspaper published at the Capital within three days after the completion of such consolidation, certified under the hand and seal of said chairman or secretary; and the candidate who shall receive a majority of the county unit votes throughout the State shall be declared by the State convention of the party hold-

ing such primary, or the permanent chairman thereof, or other party authority, without the necessity of a formal ballot, to be the nominee of such party for the particular office for which he is a candidate; and it shall be the duty of the State executive committee elected or appointed at such convention, or by its authority, or the chairman or secretary thereof, or other authority of such party, to see to it that the names of all such successful candidates shall be placed upon the tickets or ballots of such party at the general election following such primary, and such successful candidates shall be considered, deemed and held to be the duly nominated candidates of such party for the offices named: Provided, that if both candidates for any office in said second primary election shall receive an equal number of county unit votes, after the consolidation of all of the county unit votes of all the counties, said State convention or the permanent chairman thereof, or the secretary [fol. 21] thereof, or other authority of such party, shall declare the candidate receiving the majority of the popular votes cast the regular nominee of such party for that particular office: Provided, further, that if no convention of such party shall be called or held, the declaration of the result shall be made in such manner as may be prescribed by the State committee or other authority of such party: Provided, further, that said second primary election shall not affect the nomination of any candidate or candidates for any one of said offices who shall have received a majority of the county unit votes at the first primary election, and said second primary election shall be held only for the purpose of deciding contests for offices in which no candidate shall have received a majority of the county unit votes at the first primary election: Provided, further, that in the event there shall be more than two candidates in the first primary and any two candidates shall tie in said first primary for the next or second highest number of county unit votes received, the candidate who shall receive the highest number of popular votes in said first primary, as between said two candidates so tying, shall make the contest in said second primary, against the candidate who shall have received in said first primary the highest number of county unit votes; and in the event any three or more candidates shall tie in

said first primary for the highest number of county unit votes, the two candidates (among said candidates so tying for the highest number of county unit votes) who shall have received the highest number of popular votes in said first primary, shall make the contest against each other in said second primary; Provided, further, that all of the provisions of this section relative to a second primary, in the event no candidate shall receive a majority of all of the county unit votes throughout the State in the first primary, shall apply only to the offices of the United States Senator [fol. 22] and Governor; and no second primary shall be necessary to decide finally the contest for any other office named in section 34-3212; and in the contest for all of said offices, except United States Senator and Governor, the candidates for such offices who shall receive the highest number of county unit votes, throughout the State, upon the basis above set forth, shall in like manner be declared the nominees of such party for said offices, respectively; Provided, further, that in the event, after such consolidation, it shall be made to appear that any two or more candidates for the same office (except in contests for United States Senator and Governor) shall have received an equal number of county unit votes, the candidate or candidates who shall receive the highest number of popular votes throughout the State, shall, in like manner, be declared the nominee or nominees of such party for said offices, respectively; it being the intention of this proviso to provide that the majority of the county unit vote shall be the determining factor for the nomination of United States Senator and Governor and that the plurality of the county unit vote shall be the determining factor for the nomination to all other offices named in section 34-3212.

34-3214. Convention, when held.—In each regular election year in which a second primary shall be necessary, by reason of a failure of a candidate or candidates to receive a majority of the county unit votes at the first primary election, such party or its authority shall not hold its convention until after the expiration of 15 days from the date of such second primary election.

34-3215. Special primary elections to fill vacancies.—Special primary elections to fill vacancies in any of the

offices referred to in this law shall be held on such date as may be fixed by the State executive committee of such party; but the same rules prescribed in this law for determining the result in general primary elections for the offices named shall govern in determining the result of any special primary election; and a second primary election shall be held within 15 days after the date of such first primary election, in the event no candidate receives a majority of all of the county unit votes throughout the State; and the same duties and obligations are hereby imposed upon the chairman, secretary, convention or other party authorities in the case of such special primary elections as are in this law imposed upon them in the case of general primary elections: Provided, that if no convention of such party shall be called or held, to follow a special primary election the declaration of the result shall be made in such manner as may be prescribed by the State Committee or other authority of such party.

34-3216. Expenses; payment.—The expense of holding such primary elections shall be paid by the political party which causes the same to be held.

34-3217. Limitations.—Nothing in this law shall be construed to provide or require any definite unit of election for candidates for nominations for members of Congress, judges of the superior courts, solicitors general, members of the General Assembly and county officers; and this law shall not be construed to require a primary for any of the last-named officials, except in their respective districts, circuits or counties, as provided by law: Provided, however, that primaries for nomination of members of Congress, judges of the superior courts, solicitors general and members of the General Assembly shall be held on the date named in section 34-3212 for primaries for United States Senator, Governor, Statehouse officers, Justices of the Supreme Court and Judges of the Court of Appeals.

34-3218. Laws of force.—All the laws in reference to the [fol. 24] qualification of voters and their registration shall apply to said elections, and no person who is not a duly qualified and registered voter according to law and who

is not also duly qualified in accordance with the rules and regulations of the party holding the same, shall be entitled to vote at any such primary election.

(Georgia Code Annotated, Sections 34-3212 through 34-3218; Acts 1917, pp. 183, 184; Acts of 1949, p. 967, Acts of 1950, pp. 79, 80)

[fol. 25]

EXHIBIT C TO COMPLAINT

40-601 (7). Election blanks. Deciding conflicting claims to have names placed on ballot.—The Secretary of State shall furnish each ordinary of the State the form of official ballot, all blank forms, including tally sheets, blank lists of voters, forms of returns, certificates and directions to be used in all elections for United States Senate, Governor, electors of President and Vice President of the United States, representatives to Congress, Secretary of State, State Treasurer, Comptroller General, Attorney General, State Superintendent of Schools, Justices of the Supreme Court, Judges of the Court of Appeals, judges of the superior court, solicitor general, Public Service Commissioner, Commissioner of Labor, members of the General Assembly, and county officers. The Secretary of State shall certify to the respective ordinaries the names of all candidates for national and state offices who have qualified as such as provided in section 34-1904 and in case there are one or more persons purporting to represent the same political party or candidate it shall be the duty of the Secretary of State to determine such an issue. The ordinaries of the respective counties shall not be required to add any other names for national and state offices on the official ballot except upon certificate of the Secretary of State. (Georgia Code Annotated, Section 40-601(7), taken from Georgia Laws 1946, p. 75.)

[fol. 26]

EXHIBIT D TO COMPLAINT

34-1904. Ballots in elections other than primary elections.—In all elections other than primary elections held under the auspices of a political party, it shall be the duty of the ordinary to provide and furnish at the expense of the county, and in case of purely municipal elections, at the expense of the municipality, official ballots for all such elections, having printed thereon, in separate columns, the names of the candidates of each political party, designating the names of the political party to which they belong, and also the names of any other candidates for the offices to be filled at said election; and in case of election for President or Vice President of the United States, the names of the candidates for such offices may be added with the electors and party designation; Provided, however, that it shall not be the duty of said officers to place the names of any candidates on said official ballots, unless notice of their candidacy shall be given in the following manner, to wit: All candidates for national and State offices, or the proper authorities of the political party nominating them, shall file notice of their candidacy, giving their names and the offices for which they are candidates, with the Secretary of State, at least 30 days prior to the regular election, except in cases where a second primary election is necessary; Provided, further, that such candidate shall also file a petition for that purpose signed [fol. 27] by not less than five per cent of the registered voters in that territory or that such political party shall have cast no less than five per cent of the votes in the last general election next preceding for the election of such officer; but nothing in this proviso shall be construed as applying to special elections. The names of such candidates shall be filed with the Secretary of State as soon as possible after the determination of the result of said second primary. All candidates for district and county offices, either by themselves or by the proper authorities of the party nominating them, shall file notice of their candidacy with the ordinary of the county at least 15 days before the regular election, and all candidates for

municipal offices shall file notice of their candidacy, either by themselves or by the proper authorities of the party nominating them, with the mayor or other chief executive officer of the municipality at least 15 days before the regular election. In the event of the resignation or death of any nominee of any political party prior to the regular election, at which the name of said nominee is to appear on the official ballot, said vacancy in nomination shall be filled in such manner as may be determined by the proper authorities of such party. Said officers shall also have printed on said ballots such language as may be necessary for the voters to express their desires as to any question or matter which may be submitted at any such election. In all other particulars such ballots shall be [fol. 28] arranged, printed, and prepared for regular elections as provided in section 34-1903: Provided, further, however, that at any general election at which electors of President and Vice President of the United States are to be elected, there shall be printed on the official ballot, in a separate column, the names of all candidates for State, national, and other offices to be filled at said election, except candidates for President and Vice President and electors of President and Vice President, who have qualified as hereinabove by this section required, under the official name of the political party nominating such candidates, which official name shall be printed directly above such separate column; and there shall also be printed on said official ballot, in separate column, the names of all candidates for electors of President and Vice President of the United States notice of whose candidacy has been filed with the Secretary of State by the proper authorities of the political party nominating them 20 days before such general election, together with the names of the candidates for President and Vice President nominated by the political party nominating such candidates for electors, each such list of nominees for electors and for President and Vice President to be printed in a separate column under the official name of the political party nominating them, which official name shall be printed directly above each such separate column: Provided, further, that the requirements of this section as [fol. 29] to the percentage of votes cast in the last general

election and as to a petition signed by five per cent of the voters shall not apply to candidates for electors of President and Vice President of the United States, but no person shall be entitled to have his name entered on the ballot as a candidate for such elector except as the nominee of a political party which has nominated candidates for President and Vice President; Provided, further, that any political party or candidate desiring to have a name or names placed upon the general election ballot and subject to the requirements of this section as to the percentage of votes cast in the last general election and as to a petition signed by five per cent of the voters, shall accompany said petition with a sworn statement to the effect that each of the names appearing in said petition were duly qualified and registered voters at the last general election: Provided, further, that the party authorities certifying the names of candidates for electors of President and Vice President shall accompany such certification with an affidavit signed by each candidate for elector, stating that such candidate is not now and never has been a member of the Communist Party, and does not believe in or sympathize with the principles of such Communist Party.

The provisions of this section shall become operative and effective uniformly throughout the State immediately upon its passage and approval, and do not require the approval or recommendation of any grand jury. [fol. 30] The provisions of this section shall apply to all certifications of candidacy and petitions which may be on file with the Secretary of State at the time of the approval of this section, as well as to all certifications of candidacy and petitions filed with the Secretary of State subsequent to the time of approval of this section.

If any part of this section is declared unconstitutional it is the legislative intent that the remaining portions of the law remain effective. (Georgia Code, Annotated, Supplement, Section 34-1904, taken from Georgia Laws 1922, p. 100, as amended in Georgia Laws 1943, p. 292.)

EXHIBIT F *to ... plaint*

RELATIVE ELECTORAL INFLUENCE OF INDIVIDUAL CITIZENS OF EACH COUNTY 1920 THROUGH 1960

<i>County Unit Votes</i>														
Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes
1920			1930			1940			1950			1960		
APPLING:														
2 10,594	7.3	2	13,314	8.0	2	14,497	9.0	2	14,003	11.3	2	13,098 ²⁴⁶	14.1	
ATKINSON:														
2 7,656	10.1	2	6,894	15.4	2	7,093	18.5	2	7,312	21.4	2	6,188 ¹⁸⁸	29.9	
BACON:														
2 5,460	12.0	2	7,055	15.1	2	8,056	16.2	2	8,940	17.7	2	8,359 ³⁵⁹	22.2	
BAKER:														
2 8,298	9.3	2	7,818	13.6	2	8,344	17.6	2	8,952	20.5	2	4,528 ⁵⁴³	40.7	
BALDWIN:														
2 19,791	3.9	4	22,878	9.3	4	24,150	10.5	4	25,706	10.8	4	34,254 ⁰⁶⁴	10.8	
BANKS:														
2 11,814	6.6	2	9,703	11.0	2	9,733	15.0	2	8,935	22.8	2	8,467 ⁴⁹⁷	28.5	
BARROW:														
2 13,188	5.9	2	12,401	9.6	2	13,004	10.0	2	13,110	12.0	2	15,714 ^{14,485}	12.2	
BARTOW:														
4 24,527	5.0	4	25,364	8.4	4	25,283	10.4	4	27,370	11.5	4	27,987 ^{28,267}	13.2	
BEN HILL:														
2 14,599	5.3	2	13,047	8.1	2	14,223	9.0	2	14,679	10.1	2	13,585 ⁶³³	13.6	
BERRIEN:														
2 15,573	5.0	2	14,646	7.4	2	15,370	8.5	2	13,906	11.3	2	12,937 ^{12,038}	15.4	
BIBB:														
6 71,304	3.3	6	77,042	4.1	6	83,783	4.7	6	114,079	4.2	6	139,964 ^{141,249}	4.0	
BLECKLEY:														
2 10,532	7.4	2	9,133	11.7	2	9,655	13.6	2	9,218	17.1	2	9,000 ⁴²	19.2	
BRANTLEY:														
2 (1)		2	6,395	15.4	2	6,371	19.0	2	6,357	25.7		6,842 ⁹¹	31.6	
BROOKS:														
4 24,538	6.3	4	21,330	10.0	2	20,357	16.4	2	18,169	18.7		15,230 ^{15,292}	12.1	
BRYAN:														
2 6,343	12.2	2	5,952	17.9	2	6,288	20.8	2	5,965	20.5		11,214 ^{6,226}	24.7	
BULLOCH:														
4 26,133	5.9	4	26,509	3.0	4	26,010	10.1	4	24,740	12.8	4	24,299 ²⁶³	15.2	

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EXHIBIT "F" TO COMPLAINT

F
EXHIBIT 1 (Cont'd)

County Unit Votes																												
Population			Disparity Factor		County Unit Votes			Population			Disparity Factor		County Unit Votes			Population			Disparity Factor		County Unit Votes			Population			Disparity Factor	
1920					1930					1940					1950					1960								
BURKE:																												
4	30,836	5.0	4	29,224	7.3	4	26,520	9.9	4	23,458	13.5	4	20,463	18.0														
BUTTS:																												
2	12,327	6.3	2	9,345	11.4	2	9,182	14.3	2	9,079	17.4	2	8,822	20.7														
CALHOUN:																												
2	10,225	7.6	2	10,576	10.0	2	10,438	12.6	2	8,578	18.4	2	7,341	25.3														
CAMDEN:																												
2	6,969	11.1	2	6,338	16.8	2	5,910	22.2	2	7,322	21.6	2	9,975	18.6														
CANDLER:																												
2	9,228	8.4	2	8,991	11.8	2	9,103	14.4	2	8,063	19.6	2	6,656	27.7														
CARROLL:																												
4	34,752	4.5	4	34,272	6.2	4	34,156	7.3	4	34,112	9.3	4	36,329	10.2														
CATOOSA:																												
2	6,677	11.6	2	9,421	11.3	2	12,199	10.7	2	15,146	10.4	2	21,101	8.8														
CHARLTON:																												
2	4,536	17.1	2	4,381	24.2	2	5,256	25.0	2	4,821	32.7	2	5,313	34.8														
CHATHAM:																												
6	100,032	2.3	6	105,431	3.0	6	117,970	3.3	6	151,481	3.1	6	188,299	3.0														
CHATTAHOOCHEE:																												
2	5,266	14.7	2	3,894	11.9	2	15,138	8.7	2	12,149	13.0	2	13,011	14.1														
CHATTOOGA:																												
2	14,312	5.4	2	15,547	6.3	2	18,532	7.1	4	21,197	14.9	4	19,954	18.6														
CHEROKEE:																												
2	18,569	4.2	2	20,003	5.3	2	20,126	6.5	2	20,750	7.5	2	23,001	8.0														
CLARKE:																												
4	26,111	5.9	4	25,13	8.3	4	23,398	9.2	4	36,550	8.6	4	45,363	6.2														
CLAY:																												
2	7,557	10.3	2	6,943	15.3	2	7,064	17.7	2	5,344	27.0	2	4,551	40.8														
CLAYTON:																												
2	11,159	7.0	2	10,260	10.4	2	11,655	11.2	4	22,872	13.8	4	46,365	8.0														
CLINCH:																												
2	7,984	9.7	2	7,015	15.1	2	6,437	20.3	2	6,007	26.3	2	6,545	28.3														
COBB:																												
4	30,437	5.1	4	35,408	6.0	4	38,272	6.8	6	61,830	7.7	6	114,174	4.9														
COFFEE:																												
2	18,653	4.2	2	19,739	5.4	4	21,541	12.2	4	23,961	13.2	4	953	17.0														

[fol. 32]

F
EXHIBIT 8 (Cont'd)

County Unit Votes Population Disparity Factor	County Unit Votes Population Disparity Factor	County Unit Votes Population Disparity Factor	County Unit Votes Population Disparity Factor	County Unit Votes Population Disparity Factor
1920	1930	1940	1950	1960
COLQUITT: 4 29,332 5.3	4 30,622 6.9	4 33,012 7.9	4 33,999 9.3	4 34,048 33,931 10.9
COLUMBIA: 2 11,718 6.6	2 8,793 12.1	2 9,433 13.9	2 9,525 16.6	2 423 13,108 13.9
COOK: 2 11,180 6.9	2 11,311 9.4	2 11,919 11.0	2 12,201 12.9	2 822 11,180 15.7
COWETA: 4 29,047 5.3	4 25,127 8.5	4 26,972 9.7	4 27,786 11.4	4 893 28,110 12.8
CRAWFORD: 2 8,893 8.7	2 7,020 15.1	2 7,128 18.4	2 6,030 26.0	2 816 5,186 31.8
CRISP: 2 18,914 4.1	2 17,343 6.1	2 17,540 7.5	2 17,663 8.9	2 768 17,112 10.5
DADE: 2 3,918 19.8	2 4,146 25.6	2 5,894 22.2	2 7,364 21.4	2 666 8,784 21.5
DAWSON: 2 4,204 18.4	2 3,502 30.4	2 4,479 29.2	2 3,712 42.5	2 590 3,881 51.7
DECATUR: 4 31,785 4.9	4 23,622 9.0	4 22,234 11.8	4 23,620 13.4	4 203 25,121 14.7
DEKALB: 6 44,051 5.3	6 70,278 4.5	6 86,942 4.5	6 136,395 3.5	6 256,782 254,862 2.2
DODGE: 4 22,540 6.9	4 21,599 9.9	2 21,022 6.2	2 17,865 8.8	2 483 16,188 11.2
DOOLEY: 2 20,522 3.8	2 18,025 5.9	2 16,886 7.8	2 14,159 11.1	2 474 11,181 16.2
DOUGHERTY: 2 20,063 3.9	4 22,306 9.5	4 28,565 9.2	4 43,617 7.2	4 75,680 24,787 4.9
DOUGLAS: 2 10,477 7.4	2 9,461 11.2	2 10,053 13.0	2 12,173 13.0	2 741 16,572 11.1
EARLY: 2 18,983 4.1	2 18,273 5.8	2 18,679 7.0	2 17,413 9.1	2 151 13,059 14.1
ECHOLS: 2 3,313 23.4	2 2,744 38.7	2 2,964 44.2	2 2,494 63.3	2 6 1,874 98.4
EFFINGHAM: 2 9,985 7.8	2 10,164 10.5	2 9,646 13.6	2 9,133 17.3	2 144 10,181 18.2
ELBERT: 4 23,905 6.5	2 18,485 5.8	2 19,618 6.7	2 18,585 8.5	2 815 17,799 10.4

[fol. 33]

EXHIBIT ~~X~~ (Cont'd)

<i>County Unit Votes</i>	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor
1920			1930			1940			1950			1960		
EMANUEL:														
4 25,862 6.0			4 24,101 8.8			4 23,517 11.1			2 19,789 8.0			2 17,815 777 10.4		
EVANS:														
2 6,594 11.8			2 7,102 15.0			2 7,401 17.7			2 6,653 23.7			2 6,952 944 26.6		
FANNIN:														
2 12,103 6.4			2 12,969 8.2			2 14,752 8.9			2 15,192 10.4			2 13,620 777 13.5		
PAYETTE:														
2 11,396 6.8			2 8,665 12.2			2 8,170 16.0			2 7,978 19.8			2 8,199 777 22.6		
FLOYD:														
6 39,841 5.8			6 48,667 6.5			6 56,141 7.0			6 62,899 7.5			6 69,130 777 7.7		
FORSYTH:														
2 11,755 6.6			2 10,624 10.0			2 11,322 11.6			2 11,005 14.3			2 12,170 777 15.2		
FRANKLIN:														
2 19,957 3.9			2 15,902 6.7			2 15,512 8.4			2 14,446 10.9			2 13,274 777 14.0		
FULTON:														
6 232,606 1.0			6 318,587 1.0			6 392,886 1.0			6 473,572 1.0			6 556,326 777 1.0		
GILMER:														
2 8,406 9.2			2 7,344 14.5			2 9,001 14.6			2 9,963 15.8			2 8,922 777 20.8		
GLASCOCK:														
2 4,192 18.5			2 4,388 24.2			2 4,547 28.8			2 3,579 44.1			2 2,672 777 69.3		
GLYNN:														
2 19,370 4.0			2 19,400 5.5			4 21,920 10.9			4 29,046 10.9			4 41,954 777 8.8		
GORDON:														
2 17,736 4.4			2 16,846 6.3			2 18,445 7.1			2 18,922 8.3			2 19,228 777 9.7		
GRADY:														
2 20,306 3.8			2 19,200 5.5			2 19,654 6.7			2 18,928 8.3			2 18,015 777 10.3		
GREENE:														
2 18,972 4.1			2 12,616 8.4			2 13,709 9.6			2 12,843 12.3			2 11,193 777 16.6		
GWINNETT:														
4 30,327 5.1			4 27,853 7.6			4 29,087 9.0			4 32,320 9.8			4 43,541 777 8.5		
HABERSHAM:														
2 10,730 7.2			2 12,748 8.3			2 14,771 8.9			2 16,553 9.5			2 18,116 777 10.2		
HALL:														
4 26,822 5.8			4 30,313 7.0			4 34,822 7.5			4 40,113 7.9			4 49,739 777 7.5		
HANCOCK:														
2 18,357 4.2			2 13,070 8.1			2 12,764 10.3			2 11,052 14.3			2 9,979 777 18.6		

EXHIBIT ^F₈ (Cont'd)

<i>County Unit Votes</i>	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor
	1920			1930			1940			1950			1960	
HARALSON:													543	
2	14,440	5.4	2	13,263	8.0	2	14,377	9.1	2	14,663	10.8	2	14,467	12.8
HARRIS:													167	
2	15,575	5.0	2	11,140	9.5	2	11,428	11.5	2	11,265	14.0	2	11,777	16.6
HART:													229	
2	17,944	4.3	2	15,174	7.0	2	15,512	8.4	2	14,495	10.9	2	15,728	12.2
HEARD:													333	
2	11,126	7.0	2	9,102	11.7	2	8,610	15.2	2	6,975	22.6	2	5,377	34.7
HENRY:													619	
2	20,420	3.8	2	15,924	6.7	2	15,1	8.7	2	15,857	10.0	2	17,437	10.6
HOUSTON:													39,154	
2	21,964	3.5	2	11,280	9.4	2	11,303	11.6	2	20,964	7.5	2	30,953	4.7
IRWIN:													211	
2	12,670	6.1	2	12,199	8.7	2	12,936	10.1	2	11,973	13.2	2	9,764	20.1
JACKSON:													499	
4	24,654	6.3	4	21,609	9.9	2	20,089	6.7	2	13,997	8.3	2	18,470	10.0
JASPER:													135	
2	16,362	4.7	2	8,594	12.4	2	8,772	14.9	2	7,473	21.1	2	6,977	30.6
JEFF DAVIS:													914	
2	7,322	10.6	2	8,118	13.1	2	8,841	14.8	2	9,299	17.0	2	8,879	20.8
JEFFERSON:													468	
4	22,602	6.9	2	20,727	5.1	2	20,040	6.5	2	18,855	8.4	2	17,389	10.6
JENKINS:													148	
2	14,328	5.4	2	12,908	8.2	2	11,843	11.1	2	10,264	15.4	2	9,096	20.3
JOHNSON:													8,048	
2	13,546	5.7	2	12,681	8.4	2	12,953	10.1	2	9,393	16.0	2	7,883	23.4
JONES:													468	
2	13,269	5.3	2	18,592	11.3	2	8,331	15.7	2	7,338	20.9	2	8,177	21.9
LAMAR:													240	
(1)			2	9,745	10.9	2	10,091	13.0	2	10,242	15.4	2	10,401	18.1
LANIER:													97	
(1)			2	5,190	20.4	2	5,632	23.2	2	5,151	30.6	2	5,032	36.4
LAURENS:													313	
6	39,605	5.9	4	32,693	6.5	4	33,606	7.8	4	33,123	9.5	4	32,787	11.5
LEE:													204	
2	10,904	7.1	2	8,328	12.8	2	7,837	16.7	2	6,674	23.7	2	6,022	30.2

[fol. 35]

EXHIBIT ^F_X (Cont'd)

[Vol. 36]

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County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor
1920			1930			1940			1950			1960		
LIBERTY:														
2	12,707	6.1	2	8,153	13.0	2	8,595	15.2	2	8,444	19.7	2	14,487 ⁷	12.7
LINCOLN:														
2	9,739	8.0	2	7,847	13.5	2	7,042	18.6	2	6,462	24.4	2	5,880 ⁹⁰⁶	31.5
LONG:														
(1)			2	4,180	25.4	2	4,086	32.1	2	3,598	43.9	2	3,858 ⁷⁴	47.8
TOWNES:														
4	26,521	5.9	4	29,994	7.1	4	31,860	8.2	4	35,211	9.0	4	49,002 ²⁷⁰	7.5
LUMPKIN:														
2	5,240	14.8	2	4,927	21.6	2	6,223	21.1	2	6,574	24.0	2	7,228 ⁴¹	25.5
MCDUFFIE:														
2	11,509	6.7	2	9,014	11.8	2	10,878	12.0	2	11,443	13.8	2	12,166 ⁶²⁷	14.7
MCINTOSH:														
2	5,119	15.2	2	5,763	18.4	2	5,292	24.8	2	6,008	26.3	2	6,308 ⁶⁴	29.2
MACON:														
2	17,667	4.4	2	16,643	6.4	2	15,947	8.2	2	14,213	11.1	2	13,179 ⁷⁰	14.1
MADISON:														
2	18,803	4.1	2	14,921	7.1	2	13,431	9.8	2	12,238	12.9	2	11,145 ²⁴⁶	16.4
MARION:														
2	7,604	10.2	2	6,968	15.2	2	6,954	18.8	2	6,521	24.2	2	5,126 ⁴⁷⁷	33.6
MERIWETHER:														
4	26,168	5.9	4	22,437	9.5	4	22,055	11.9	4	21,055	15.0	4	19,000 ⁷⁵⁶	18.8
MILLER:														
2	9,565	8.1	2	9,076	11.7	2	9,098	13.1	2	9,023	17.5	2	6,168 ⁹⁰⁸	21.0
MITCHELL:														
4	25,588	6.1	4	23,620	9.0	4	23,231	11.3	4	22,028	14.0	4	19,121 ⁶⁵²	13.8
MONROE:														
2	20,138	3.8	2	11,606	9.1	2	10,749	12.2	2	10,523	15.0	2	10,100 ⁴⁹⁵	17.7
MONTGOMERY:														
2	9,167	8.5	2	10,020	10.6	2	9,668	13.0	2	7,901	20.0	2	6,880 ²⁸⁴	29.1
MORGAN:														
2	20,143	3.9	2	12,488	8.5	2	12,713	10.3	2	11,899	13.3	2	10,140 ²⁸⁰	18.0
MURRAY:														
2	9,490	8.2	2	9,215	11.5	2	11,137	11.8	2	10,670	14.8	2	10,331 ⁴⁴⁷	17.7
MUSCOGEE:														
6	44,195	5.3	6	57,558	5.5	6	75,494	5.2	6	118,028	4.0	6	158,623 ^{157,049}	3.5

EXHIBIT F (Cont'd)

County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor
1920			1930			1940			1950			1960		
NEWTON:														
2 21,680	3.6		2 17,290	6.1		2 18,576	7.1		2 20,135	7.8		2 20,999	8.8	
O CONEE:														
2 11,067	7.0		2 8,082	13.1		2 7,576	17.3		2 7,009	22.5		2 6,304	29.7	
OGLETHORPE:														
2 20,287	3.8		2 12,927	8.2		2 12,430	10.5		2 9,958	15.9		2 7,926	23.6	
PAULDING:														
2 14,025	5.5		2 12,327	8.6		2 12,832	10.2		2 11,752	13.4		2 13,101	14.1	
PEACH:														
(1)			2 10,268	10.4		2 10,378	12.6		2 11,705	13.5		2 13,846	13.4	
PICKENS:														
2 8,222	9.4		2 9,687	11.0		2 9,136	14.3		2 8,355	17.8		2 8,903	20.9	
PIERCE:														
2 11,934	6.5		2 12,522	8.5		2 11,800	11.1		2 11,112	14.2		2 9,678	19.1	
PIKE:														
2 21,212	3.7		2 10,853	9.8		2 10,375	12.6		2 8,459	18.7		2 7,138	25.8	
POLK:														
2 20,357	3.8		4 25,141	8.5		4 28,467	9.2		4 30,976	10.2		4 28,015	13.2	
PULASKI:														
2 11,587	6.7		2 9,005	11.8		2 9,829	14.1		2 8,308	17.9		2 8,404	22.5	
PUTNAM:														
2 15,151	5.1		2 8,367	12.7		2 8,514	15.4		2 7,731	20.4		2 7,798	23.5	
QUITMAN:														
2 3,417	22.7		2 3,120	27.8		2 3,353	38.1		2 3,015	52.3		2 2,332	76.1	
RABUN:														
2 5,746	13.5		2 6,331	16.8		2 7,021	16.7		2 7,424	21.3		2 7,456	25.0	
RANDOLPH:														
2 16,721	4.6		2 17,174	6.2		2 16,609	7.9		2 13,804	11.4		2 11,078	16.7	
RICHMOND:														
6 63,692	3.7		6 72,990	4.4		6 81,863	4.8		6 108,876	4.3		6 135,601	4.1	
ROCKDALE:														
2 9,521	8.1		2 7,247	14.7		2 7,724	16.9		2 8,464	18.7		2 10,572	17.6	
SCHLEY:														
2 5,243	14.8		2 5,347	19.9		2 5,033	26.0		2 4,036	39.1		2 3,256	55.8	
SCREVEN:														
4 23,552	6.6		2 20,503	5.2		2 20,353	6.0		2 13,000	8.8		2 14,919	12.4	

[Col. 37]

COUNTY UNIT VOTES

County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor
1920			1930			1940			1950			1960		
SEMINOLE:														
2 (1)			2 7,389 14.4			2 8,492 15.4			2 7,904 20.0			2 302		
												6,788	27.3	
SPALDING:														
2 21,908 3.5			4 23,495 9.0			4 28,427 9.2			4 31,045 10.2			4 404		
												35,112	10.3	
STEPHENS:														
2 11,215 5.9			2 11,740 9.0			2 12,972 10.1			2 10,647 9.5			2 391		
												18,112	10.1	
STEWART:														
2 12,089 6.4			2 11,114 9.0			2 10,603 12.4			2 9,194 17.2			2 371		
												7,118	25.2	
SUMTER:														
4 29,640 5.2			4 25,800 9.9			4 24,502 10.7			4 24,208 13.0			4 652		
												24,111	15.1	
TALBOT:														
2 11,158 7.0			2 8,458 12.6			2 8,141 16.1			2 7,687 20.5			2 127		
												7,118	20.0	
TALLIAFERRO:														
2 8,841 8.8			2 5,172 17.2			2 5,278 20.9			2 4,515 35.0			2 370		
												3,112	55.6	
TATTNALL:														
2 14,502 5.3			2 15,411 6.5			2 16,243 8.1			2 15,939 9.9			2 837		
												15,112	11.8	
TAYLOR:														
2 11,473 6.8			2 10,617 10.0			2 10,768 12.2			2 9,113 17.3			2 311		
												8,111	22.3	
TELFAIR:														
2 12,291 5.1			2 14,997 7.1			2 15,145 8.7			2 13,221 11.9			2 715		
												11,118	15.9	
TERRELL:														
2 19,501 4.0			2 18,290 5.8			2 16,075 7.9			2 14,314 11.0			2 742		
												12,110	14.6	
THOMAS:														
4 33,044 4.7			4 32,12 6.5			4 31,289 8.4			4 33,32 9.3			4 319		
												34,112	10.8	
TIFT:														
2 14,493 5.4			2 16,68 6.6			2 18,99 7.0			4 22,45 13.9			4 487		
												23,112	17.9	
TOMBS:														
2 13,897 5.5			2 17,165 6.2			2 16,952 7.7			2 17,382 9.1			2 837		
												15,714	11.0	
TOWNS:														
2 3,937 19.7			2 4,346 24.5			2 4,925 26.0			2 4,803 32.9			2 538		
												4,111	41.0	
REUTLIEN:														
2 7,664 10.1			2 7,488 14.2			2 7,32 17.2			2 5,522 24.2			2 874		
												5,112	31.5	
TROUP:														
4 35,097 4.3			6 36,752 8.1			6 43,849 9.0			4 49,841 6.3			4 189		
												47,112	7.6	
TURNER:														
2 12,466 6.2			2 11,196 5.5			2 10,846 12.1			2 10,479 15.1			2 439		
												8,118	22.0	
TWIGGS:														
2 10,407 7.4			2 8,312 12.1			2 9,117 14.4			2 8,308 19.0			2 935		
												7,112	23.3	

EXHIBIT Q (Cont'd)

County Unit Votes	1920		1930		1940		1950		1960	
	Population	Disparity Factor	Population	Disparity Factor	Population	Disparity Factor	Population	Disparity Factor	Population	Disparity Factor
UNION:										
2 6,455 12.0	2	6,340 16.8	2	7,680 17.1	2	7,318 21.6	2	6,492 28.5	510	
UPSON:										
2 14,786 5.2	2	19,509 5.4	4	25,064 10.4	4	25,079 12.6	4	23,112 15.8	800	
WALKER:										
4 23,370 3.6	4	26,206 8.1	4	31,024 8.4	4	38,198 8.3	4	45,264 3.3	45,264	
WALTON:										
4 24,216 6.4	4	21,118 10.1	2	20,717 6.3	2	20,230 7.8	2	20,112 9.1	481	
WARE:										
4 28,361 5.5	4	26,558 8.0	4	21,929 9.4	4	30,201 10.4	4	33,964 10.9	34,219	
WARREN:										
2 11,828 3.6	2	11,181 9.0	2	10,237 12.8	2	8,779 18.0	2	7,380 25.2	60	
WASHINGTON:										
4 28,141 5.5	4	25,030 8.5	4	24,230 10.8	2	21,012 7.5	2	18,171 9.8	903	
WAYNE:										
2 14,381 5.4	2	12,647 8.4	2	13,122 10.0	2	14,248 11.1	2	17,812 10.3	921	
WEBSTER:										
2 5,342 14.5	2	5,032 21.2	2	4,126 27.8	2	4,081 38.7	2	3,248 56.9	7	
WHEELER:										
2 9,817 7.9	2	9,149 11.6	2	8,535 15.3	2	6,712 23.5	2	5,312 34.7	42	
WHITE:										
2 6,105 12.7	2	6,056 17.5	2	6,417 20.4	2	5,951 25.5	2	6,918 26.7	35	
WHITFIELD:										
2 16,897 4.5	2	20,708 5.1	4	25,055 10.0	4	34,132 9.2	4	42,182 5.8	09	
WILCOX:										
2 15,511 5.0	2	13,339 7.9	2	12,555 10.3	2	10,157 15.5	2	8,834 23.5		
WILKES:										
4 24,210 3.4	2	15,944 6.6	2	15,064 9.7	2	12,520 12.1	2	10,911 17.0	961	
WILKINSON:										
2 11,376 6.3	2	10,844 9.8	2	11,025 11.9		9,781 15.1		9,771 20.0	250	
WORTH:										
4 23,863 6.5	4	21,094 10.1	4	21,374 12.3	2	19,351 13.2	2	16,112 11.1	682	
CAMPBELL:					(2)		(2)	(2)		
2 11,709 6.6	2	9,903 10.1								
MILTON:					(2)		(2)	(2)		
2 6,885 11.3	2	6,130 15.8								

[Col. 39]

[fol. 40a] Clerk's Certificate to foregoing paper (omitted in printing).

EXHIBIT ^F_E (Cont'd)

<i>County Unit Votes</i>	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population	Disparity Factor	County Unit Votes	Population
	1920		1930	1940		1950							
GEORGIA: Minus Fulton)	6 2663,226	5.8	408 2589,919	8.4	404 2730,837	9.7	404 2971,006	10.7	404	3,386,790			
										3,386,600			
GEORGIA: Total)	2 2895,832	-	414 2900,506	-	410 3123,723	-	410 3444,578	-	410	3,943,116			
										3,943,116			

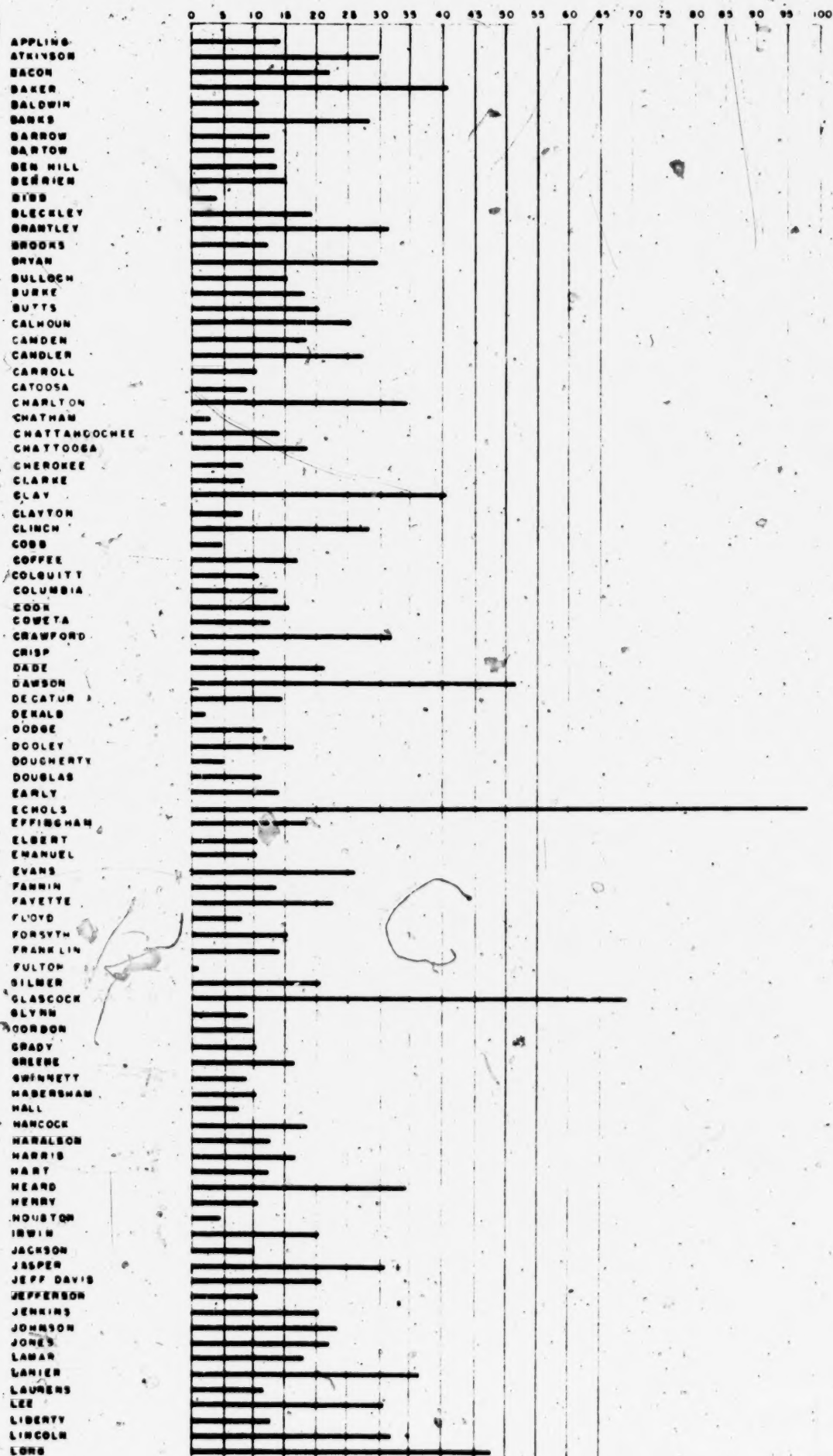
SOURCE:

Calculated from U.S. Census 1920, 1930, 1940, 1950,
1960 preliminary.

FOOTNOTES:

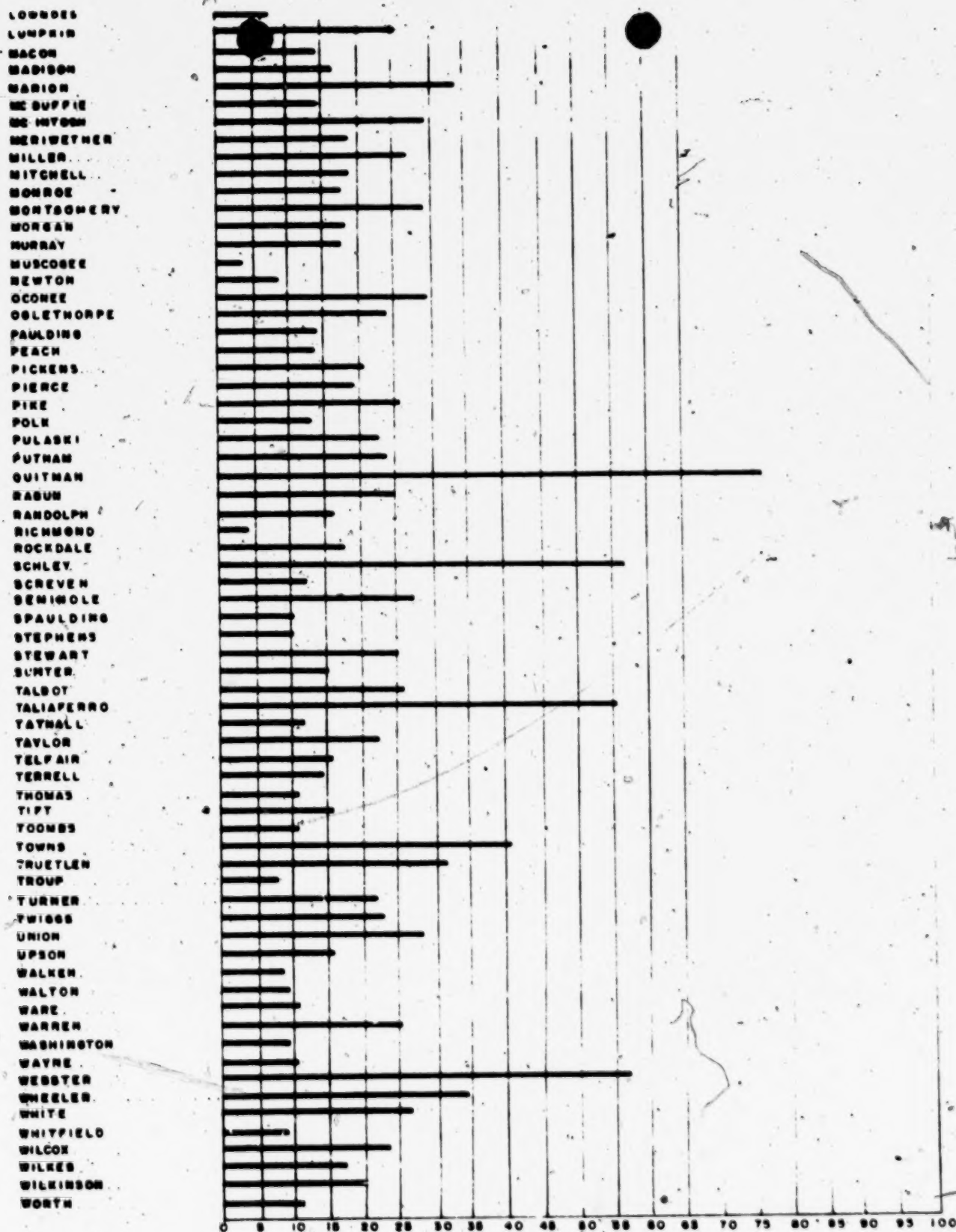
- (1) Counties created since 1920 Census.
- (2) Counties merged with Fulton County after 1930 Census.

RELATIVE ELECTORAL INFLUENCE OF INDIVIDUAL CITIZENS IN EACH OF GEORGIA'S COUNTIES



[fol. 41]

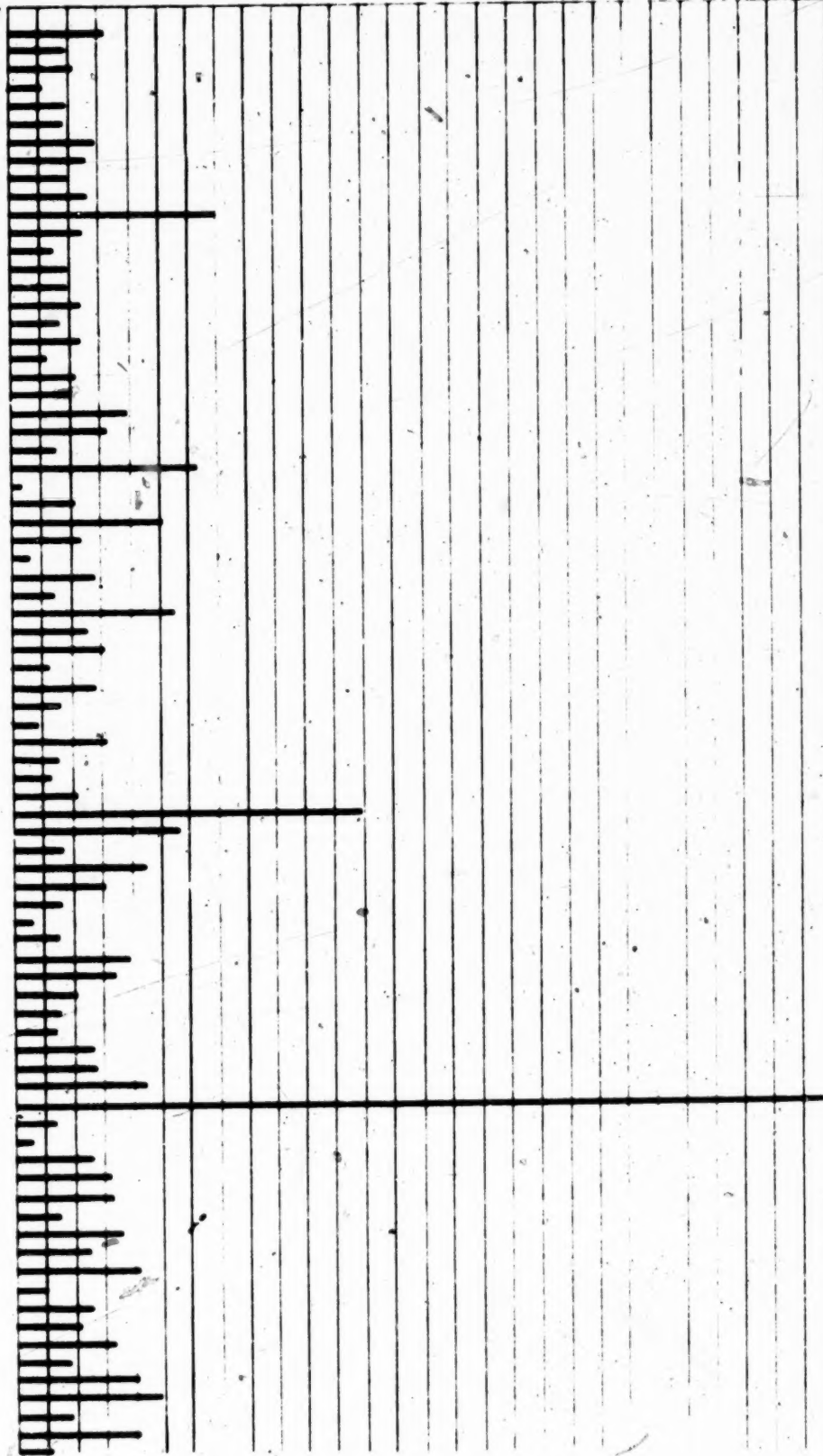
EXHIBIT "G" TO COMPLAINT



NUMBER OF VOTES CAST REPRESENTED BY ONE COUNTY UNIT VOTE IN DEMOCRATIC PRIMARY ELECTION FOR GOVERNOR IN 1958

THOUSANDS OF VOTES

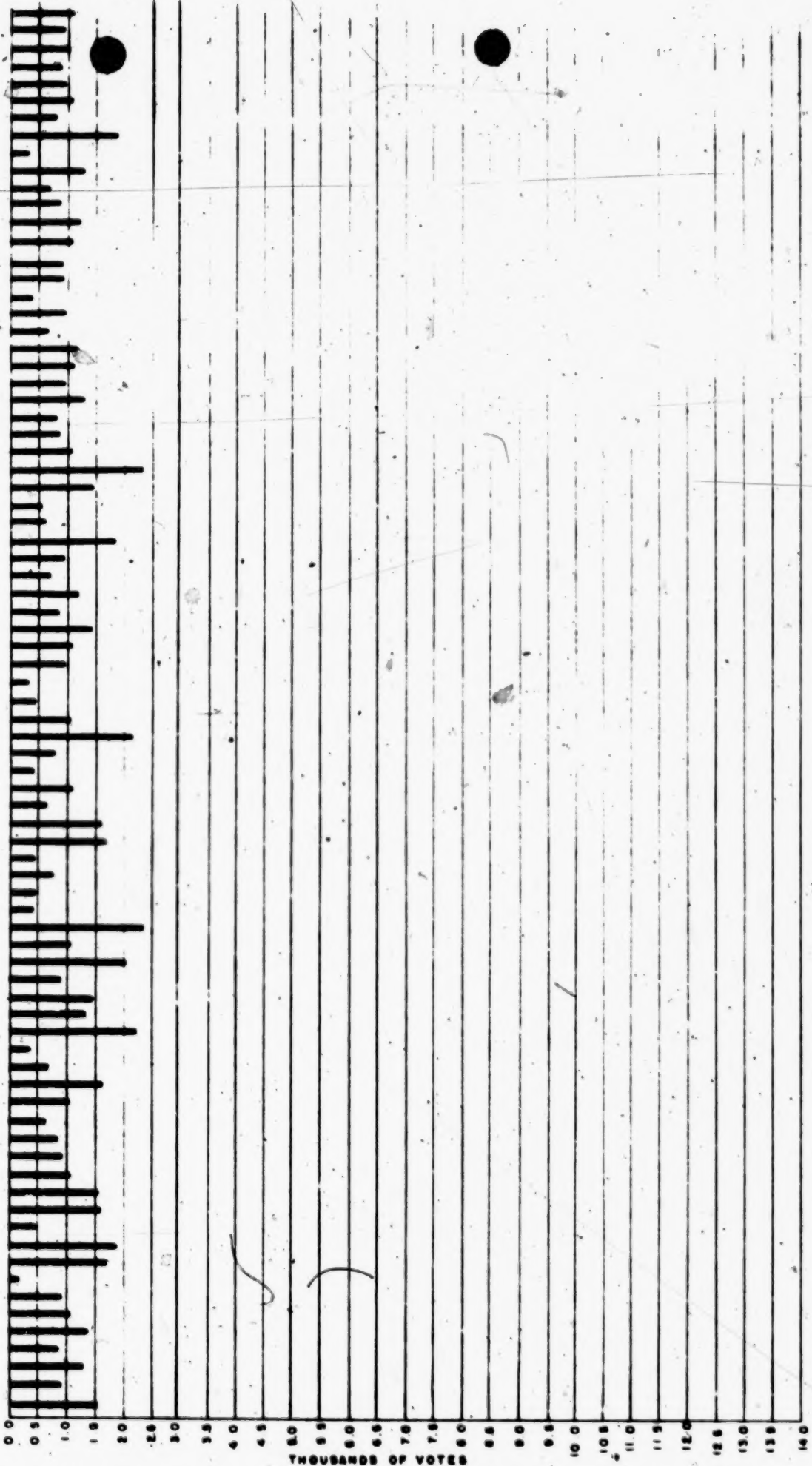
APPLING
ATKINSON
BACON
BAKER
BALDWIN
BAMES
BARROW
BARTON
BEN HILL
BERRIER
BIBB
BLECKLEY
BRANTLEY
BROOKS
BRYAN
BULLOCK
BURKE
BUTTS
CALHOUN
CAMDEN
CANDLER
CARROLL
CATOOSA
CHARLTON
CHATHAM
CHATTANOOCHEE
CHATTOOGA
CHEROKEE
CLARKE
CLAY
CLAYTON
CLINCH
COBB
COFFEE
COLUMBIA
COLUMBIA
COOK
COVINGTON
CRAWFORD
CRISP
DADE
DAWSON
DECATUR
DEKALB
DODGE
DOOLEY
DOUGHERTY
DOUGLAS
EARLY
ECHOLS
EFFINGHAM
ELBERT
EMANUEL
EVANS
FANNIN
FAVETTE
FLOYD
FORSYTH
FRANKLIN
FULTON
GILMER
GLASCOCK
GLYNN
GORDON
GRADY
GREENE
GRINNETT
HABERSHAM
HALL
HARCOCK
HARALSON
HARRIS
HART
HEARD
HERRY
HOUSTON
IRWIN
JACKSON
JACKSON



[fol. 43]

EXHIBITS "H" AND "I" TO COMPLAINT

JEFF DAVIS
 JEFFERSON
 JENNINS
 JOHNSON
 JONES
 LAMAR
 LAMIER
 LAURENS
 LEE
 LIBERTY
 LINCOLN
 LONG
 LOWMEYER
 LUMPKIN
 MACON
 MADISON
 MARION
 MC DUFFIE
 MC INTOSH
 MERIWETHER
 MILLER
 MITCHELL
 MONROE
 MONTGOMERY
 MORGAN
 MURRAY
 MUSCOGEE
 NEWTON
 OCONEE
 OGLEYTHORPE
 PAULDING
 PEACH
 PICKENS
 PIERCE
 PINE
 POLK
 PULASKI
 PUTNAM
 QUITMAN
 RABUN
 RANDOLPH
 RICHMOND
 ROCKDALE
 SCHLEY
 SCREVEN
 SEMINOLE
 SPAULDING
 STEPHENS
 STEWART
 SUMTER
 TALBOT
 TALLIAFERRO
 TAYNALL
 TAYLOR
 TELFAIR
 TERRELL
 THOMAS
 TIFT
 TOWNS
 TOWNS
 TRUSTEN
 TROUP
 TURNER
 TWIGGS
 UNION
 UPSON
 WALKER
 WALTON
 WARE
 WARREN
 WASHINGTON
 WAYNE
 WEBSTER
 WHEELER
 WHITE
 WHITFIELD
 WILCOX
 WILKES
 WILKINSON
 WORTH



[fol. 45]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER DIRECTING FILING OF COMPLAINT—March 26, 1962

Tender of the complaint in the above action is acknowledged. The same is ordered filed this 26th day of March, 1962.

Frank A. Hooper, Judge, U. S. District Court.

[fol. 46]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER CONVENING THREE-JUDGE COURT—April 2, 1962

The Honorable Frank A. Hooper, United States District Judge for the Northern District of Georgia, to whom an application for injunction and other relief has been presented in the above-styled and numbered cause, having notified me that the action is one required by act of Congress to be heard and determined by a district court of three judges, I, Elbert P. Tuttle, Chief Judge of the Fifth Circuit, hereby designate the Honorable Griffin B. Bell, United States Circuit Judge, and the undersigned Elbert P. Tuttle, United States Circuit Judge, to serve with Judge Hooper as members of, and with him to constitute the said court to hear and determine the action.

Witness my hand this 2nd day of April, 1962.

Filed April 2, 1962.

Elbert P. Tuttle, Chief Judge.

[fol. 47] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

REQUEST FOR ADMISSIONS—Filed April 9, 1962

Plaintiff James O'Hear Sanders requests each of the defendants, within ten (10) days after service of this Request, to make the following admissions for the purpose of this action only and subject to all pertinent objections to admissibility which may be interposed at the trial. When a question or request has a lettered subsection, it shall be considered a separate request for each separate lettered subsection.

(1)

That George D. Stewart is presently the Secretary of the Georgia State Democratic Executive Committee.

[fol. 48] (2)

That James H. Gray is presently the Chairman of the Georgia State Democratic Executive Committee.

(3)

That the Georgia State Democratic Executive Committee is recognized as the governing body of the Georgia State Democratic Party.

(4)

That Ben W. Fortson, Jr. is presently Secretary of State of the State of Georgia.

(5)

That the defendant Georgia State Democratic Party is planning to hold a statewide primary election in Georgia on September 12, 1962 for the nomination of candidates for the offices of Governor, Lieutenant Governor and other state house officers.

(6)

That the defendant Georgia State Democratic Party is planning to hold a statewide primary election in Georgia on September 12, 1962 for the nomination of a candidate for the office of United States Senator.

(7)

Defendant Committee is planning to supervise the holding of a statewide primary election on September 12, 1962, and is planning to tabulate and consolidate the ballots cast in such primary election and is planning to certify to [fol. 49] the defendant Fortson the names of persons determined by said Committee to have been nominated in the primary election.

(8)

Defendant Fortson, as Secretary of State, is intending to furnish to the several ordinaries of the State of Georgia official ballots and election supplies and to certify to said ordinaries the names of candidates for the aforesaid offices nominated in the Democratic primary election.

(9)

That no candidate of any of the following offices, other than the nominee of the Democratic Party, has been elected to said office since 1872:

- (a) United States Senator;
- (b) Governor;
- (c) Lieutenant Governor;
- (d) Secretary of State;
- (e) Justice of the Supreme Court;
- (f) Judge of the Court of Appeals;
- (g) Attorney General;
- (h) Comptroller General;
- (i) Commissioner of Labor;
- (j) Treasurer.

(10)

That no elected candidate of any of the following offices, other than the nominee of the Democratic Party, has held said office since 1872:

- (a) United States Senator;
- (b) Governor;
- (c) Lieutenant Governor;
- (d) Secretary of State;
- (e) Justice of the Supreme Court;
- (f) Judge of the Court of Appeals;
- (g) Attorney General;
- (h) Comptroller General;
- (i) Commissioner of Labor;
- (j) Treasurer.

[fol. 50]

(11)

That no candidate of any of the following offices, other than the nominee of the Democratic Party, has been elected to said office in this Twentieth Century:

- (a) United States Senator;
- (b) Governor;
- (c) Lieutenant Governor;
- (d) Secretary of State;
- (e) Justice of the Supreme Court;
- (f) Judge of the Court of Appeals;
- (g) Attorney General;
- (h) Comptroller General;
- (i) Commissioner of Labor;
- (j) Treasurer.

(12)

That no elected candidate of any of the following offices, other than the nominee of the Democratic Party, has held said office in this Twentieth Century:

- (a) United States Senator;
- (b) Governor;
- (c) Lieutenant Governor;
- (d) Secretary of State;

- (e) Justice of the Supreme Court;
- (f) Judge of the Court of Appeals;
- (g) Attorney General;
- (h) Comptroller General;
- (i) Commissioner of Labor;
- (j) Treasurer.

(13)

That no candidate of any of the following offices, other than the nominee of the Democratic Party, has been elected to said office since the effective date of the Act of the Legislature of the State of Georgia, known as the Neill Primary Act of 1917, Georgia Laws 1917, pp. 183-189:

- (a) United States Senator;
- (b) Governor;
- (c) Lieutenant Governor;
- (d) Secretary of State;
- (e) Justice of the Supreme Court;
- (f) Judge of the Court of Appeals;
- (g) Attorney General;
- (h) Comptroller General;
- (i) Commissioner of Labor;
- (j) Treasurer.

[fol. 51]

(14)

That no elected candidate of any of the following offices, other than the nominee of the Democratic Party, has held said office since the effective date of the Act of the Legislature of the State of Georgia, known as the Neill Primary Act of 1917, Georgia Laws 1917, pp. 183-189:

- (a) United States Senator;
- (b) Governor;
- (c) Lieutenant Governor;
- (d) Secretary of State;

- (e) Justice of the Supreme Court;
- (f) Judge of the Court of Appeals;
- (g) Attorney General;
- (h) Comptroller General;
- (i) Commissioner of Labor;
- (j) Treasurer.

(15)

That since 1872, the Democratic Party has never failed to hold a statewide primary for the nomination of candidates of the Democratic Party for the offices enumerated in Request No. 14.

(16)

That in this Twentieth Century, the Democratic Party has never failed to hold a statewide primary for the nomination of candidates of the Democratic Party for the offices enumerated in Request No. 14.

(17)

That since the effective date of the Act of the Legislature of the State of Georgia known as the Neill Primary Act of 1917, Georgia Laws 1917, pp. 183-189, the Democratic Party has never failed to hold a statewide primary for the nomination of candidates of the Democratic Party for the offices enumerated in Request No. 14.

[fol. 52]

(18)

That Fulton County, according to the 1960 United States Census, had a population of 556,326 persons and is Georgia's most populous county.

(19)

That the State of Georgia, according to the 1960 United States Census, had a population of 3,943,116 persons.

(20)

That Echols County, according to the 1960 United States Census, had a population of 1,876 persons and is the least populous county in Georgia.

(21)

That DeKalb County, according to the 1960 United States Census, had a population of 256,782 persons and is the second most populous county in Georgia.

(22)

That the copy of United States Census of Population: 1960, Final Report, PC(1)-12A—Number of Inhabitants—Georgia, prepared by the United States Department of Commerce, Bureau of the Census, attached as an exhibit to this Request for Admissions, is a true and correct copy of same.

(23)

That the population figures shown on Exhibit F attached to plaintiff's petition, for the years 1920, 1930, 1940, and [fol. 53] 1950 are true and correct as shown by the United States Census Report for each of the respective years.

(24)

That notwithstanding a consistent increase in Fulton County's percentage of total population of the State of Georgia since 1920, it has never been accorded but 1.46% of the unit votes in each statewide primary election held by the Georgia State Democratic Party.

(25)

That in the Democratic gubernatorial primary of 1954, the successful candidate received 36.3% of the total popular vote cast in said election for the office of Governor.

(26)

That in the Democratic gubernatorial primary of 1954, the successful candidate received, under the county unit system, 73.6% of the total unit votes of the several counties of Georgia.

(27)

That in the Democratic gubernatorial primary of 1954, the successful candidate received 25%, plus or minus $\frac{1}{2}\%$, of the votes cast in Fulton County in said primary, which, in the circumstances of that primary, constituted a plurality, thereby giving all six unit votes of Fulton County to the successful candidate.

[fol. 54]

(28)

That the Georgia State Democratic Party is planning to tabulate and consolidate the popular votes cast in said primary election to be held on September 12, 1962, on a county unit basis, in accordance with the provisions of the Neill Primary Act, Georgia Laws 1917, pp. 183-189, codified as §34-3213 through §34-3218, Georgia Code Annotated.

(29)

That James H. Gray and George D. Stewart, in their representative capacities as officers of the Georgia State Democratic Executive Committee, are planning to tabulate and consolidate the popular votes cast in said primary election to be held on September 12, 1962, on a county unit basis, in accordance with the provisions of the Neill Primary Act, Georgia Laws 1917, pp. 183-189, codified as §34-3213 through §34-3218, Georgia Code Annotated.

(30)

That since 1900 no candidate for any of the following offices has been on the general election ballot in the State of Georgia other than the candidate of the Democratic Party:

- (a) United States Senator;
- (b) Governor;
- (c) Lieutenant Governor;
- (d) Secretary of State;
- (e) Justice of the Supreme Court;
- (f) Judge of the Court of Appeals;
- (g) Attorney General;

- (h) Comptroller General;
- (i) Commissioner of Labor;
- (j) Treasurer.

[fol. 55]

(31)

That since 1918 no candidate for any of the following offices has been on the general election ballot in the State of Georgia other than the candidate of the Democratic Party:

- (a) United States Senator;
- (b) Governor;
- (c) Lieutenant Governor;
- (d) Secretary of State;
- (e) Justice of the Supreme Court;
- (f) Judge of the Court of Appeals;
- (g) Attorney General;
- (h) Comptroller General;
- (i) Commissioner of Labor;
- (j) Treasurer.

(32)

That as of the date of the filing of the complaint in this case, all efforts to repeal the county unit system as imposed by the Neill Primary Act, Georgia Laws 1917, pp. 183-189, have failed.

(33)

That as of the date of filing of the complaint in this case, all efforts to modify the county unit system as imposed by the Neill Primary Act, Georgia Laws 1917, pp. 183-189, have failed.

(34)

That a proposed Constitutional amendment entitled "Election of State Officers—Proposed Amendment of the Constitution No. 6 (Senate Resolution No. 6)", Georgia Laws, Regular Session, 1949, p. 528, was submitted to the people in the general election of 1950 and failed of passage.

[fol. 56]

(35)

That a proposed amendment to the Constitution entitled "State Officers—Primary Elections on County Unit Basis, Proposed Amendment to the Constitution No. 10 (Senate Resolution No. 6)", as it appears in Georgia Laws 1951, p. 101, was submitted to the people in the general election of 1952 and failed of passage.

This 6th day of April, 1962.

Heyman, Abram, Young, Hicks & Maloof, By Morris
B. Abram, Attorneys for Plaintiff.

Service omitted.

Filed April 9, 1962.

[fol. 57]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO AMEND COMPLAINT

Plaintiff moves the Court for leave to amend his Complaint on file herein in the following particulars:

1.

Amend Exhibit "F" attached to said Complaint by adding an additional column showing the population figures of the various counties of Georgia according to the final figures of the United States Census for the year 1960. The population figures for the year 1960, presently appearing in said Exhibit "F", are taken from the preliminary figures of the United States Census for the year 1960. It is the purpose of this amendment to bring the figures for the year 1960 set forth in said Exhibit "F" up to date and in agreement with the final figures of the United States Census for the year 1960.

Attached hereto and marked "Amendment to Exhibit "F" is a list of the counties of the State of Georgia and

their respective populations for the year 1960 according to the official United States Census for the year 1960.

Heyman, Abram, Young, Hicks & Maloof, By Morris
B. Abram, By Maurice N. Maloof.

[fol. 58]

AMENDMENT TO EXHIBIT "F"

Counties	Population 1960
Appling	13,246
Atkinson	6,188
Bacon	8,359
Baker	4,543
Baldwin	34,064
Banks	6,497
Barrow	14,485
Bartow	28,267
Ben Hill	13,633
Berrien	12,038
Bibb	141,249
Bleckley	9,642
Brantley	5,891
Brooks	15,292
Bryan	6,226
Bulloch	24,263
Burke	20,596
Butts	8,976
Calhoun	7,341
Camden	9,975
Candler	6,672
Carroll	36,451
Catoosa	21,101
Charlton	5,313
Chatham	188,259
Chattahoochee	13,011
Chattooga	19,954
Cherokee	23,001
Clarke	45,363
Clay	4,551

Counties	Population 1960
Clayton	46,365
Clinch	6,545
Cobb	114,174
Coffee	21,953
Colquitt	34,048
Columbia	13,423
Cook	11,822
Coweta	28,893
Crawford	5,816
Crisp	17,768
Dade	8,666
Dawson	3,590
Decatur	25,203
DeKalb	256,782
Dodge	16,483
Dooly	11,474
Dougherty	75,680
Douglas	16,741
Early	13,151
Echols	1,876
[fol. 59]	
Effingham	10,144
Elbert	17,835
Emanuel	17,815
Evans	6,952
Fannin	13,620
Fayette	8,199
Floyd	69,130
Forsyth	12,170
Franklin	13,274
Fulton	556,326
Gilmer	8,922
Glascok	2,672
Glynn	41,954
Gordon	19,228
Grady	18,015

Counties	Population 1960
Greene	11,193
Gwinnett	43,541
Habersham	18,116
Hall	49,739
Hancock	9,979
Haralson	14,543
Harris	11,167
Hart	15,229
Heard	5,333
Henry	17,619
Houston	39,154
Irwin	9,211
Jackson	18,499
Jasper	6,135
Jeff Davis	8,914
Jefferson	17,468
Jenkins	9,148
Johnson	8,048
Jones	8,468
Lamar	10,240
Lanier	5,097
Laurens	32,313
Lee	6,204
Liberty	14,487
Lincoln	5,906
Long	3,874
Lowndes	49,270
Lumpkin	7,241
McDuffie	12,627
McIntosh	6,364
Macon	13,170
Madison	11,246
Marion	5,477
Meriwether	19,756
Miller	6,908

[fol. 60]

Counties	Population 1960
Mitchell	19,652
Monroe	10,495
Montgomery	6,284
Morgan	10,280
Murray	10,447
Muscogee	158,623
Newton	20,999
Oconee	6,304
Oglethorpe	7,926
Paulding	13,101
Peach	13,846
Pickens	8,903
Pierce	9,678
Pike	7,138
Polk	28,015
Pulaski	8,204
Putnam	7,798
Quitman	2,432
Rabun	7,456
Randolph	11,078
Richmond	135,601
Rockdale	10,572
Schley	3,256
Screven	14,919
Seminole	6,802
Spalding	35,404
Stephens	18,391
Stewart	7,371
Sumter	24,652
Talbot	7,127
Taliaferro	3,370
Tattnall	15,837
Taylor	8,311
Telfair	11,715
Terrell	12,742

Counties	Population 1960
Thomas	34,319
Tift	23,487
Toombs	16,837
Towns	4,538
Treutlen	5,874
Troup	47,189
Turner	8,439
Twiggs	7,935
Union	6,510
Upton	23,800
Walker	45,264
Walton	20,481
Ware	34,219
Warren	7,360
Washington	18,903
[fol. 61]	
Wayne	17,921
Webster	3,247
Wheeler	5,342
White	6,935
Whitfield	42,109
Wilcox	7,905
Wilkes	10,961
Wilkinson	9,250
Worth	16,682
GEORGIA (minus Fulton)	3,386,790
GEORGIA—Total	3,943,116

Service Omitted

Filed April 18, 1962

[fol. 62]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO AMEND COMPLAINT—

April 18, 1962

The Plaintiff having moved the Court for leave to amend his Complaint in the above matter by adding a column of figures to Exhibit "F" attached to his said Complaint showing the population figures of the various counties of Georgia for the year 1960 according to the final figures of the United States Census for the year 1960;

After consideration, it is ordered that Plaintiff's Complaint be amended in the particulars set forth in Plaintiff's said Motion, that is, that Exhibit "F" of Plaintiff's Complaint is amended by adding thereto the column of figures relating to population of Georgia Counties for the year 1960 attached to Plaintiff's Motion to Amend, subject to objection.

This 18th day of April, 1962:

Elbert P. Tuttle, United-States Circuit Judge.

[fol. 63]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

RESPONSE OF BEN W. FORTSON, JR. TO PLAINTIFF'S
REQUEST FOR ADMISSIONS

Comes now Ben W. Fortson, Jr., one of Defendants in the above stated matter, and answers the Request for Admissions filed by Plaintiff, as follows:

1.

Defendant admits Request No. 1.

2.

Defendant admits Request No. 2.

3.

Defendant can neither admit nor deny Request No. 3, for the reason that the same is vague in that it does not state by "whom" said committee is supposed to be so recognized.

4.

Request No. 4 is admitted.

[fol. 64]

5.

Request No. 5 is admitted.

6.

Request No. 6 is admitted.

7.

Answering Request No. 7, Defendant is unable to admit same for the reason that he has no knowledge as to whether said committee or some other body or person will consolidate and tabulate said ballots and certify same to this Defendant.

8.

Answering Request No. 8, this Defendant says that he intends to perform whatever duties are required of him by the law of Georgia, of which this Court can take judicial notice. In the past, this Defendant has furnished the form of the ballot, but each county prepares and pays for its own ballots. Unless the law is changed, Defendant plans to follow the same procedure this year.

9.

Answering Requests No's. 9, 10, 11, 12, 13 and 14, Defendant says that he has no readily available records, nor independent recollection relating to the subject matter of said requests, but he assumes that such matters are historical

in nature of which this Court can take judicial notice. Defendant does have various records in the Department of Archives which might reflect some of the matters referred to, but in order for Defendant to answer said request, it would entail considerable research, evaluation and interpretation, which Defendant does not have sufficient time to do in order to be able to answer the request within the time allowed by order of court.

10.

Request No. 15 is denied.

[fol. 65]

11.

Answering Request No. 16, Defendant has no record or independent recollection of the matters therein referred to.

12.

Answering Request No. 17, so far as known to Defendant, said Request is true, although Defendant has not undertaken to perform the extensive research necessary to properly answer same.

13.

Request No's. 18, 19, 20 and 21 are true according to information in this Defendant's possession.

14.

Answering Request No. 22, Defendant has no information as to the authenticity of said document, and is unable to admit same.

15.

Answering Request No. 23, Defendant has not undertaken to compare all of the many statistics set forth in Exhibit "F" with copies of the official census for said years, or to obtain copies of such census and reports for that purpose, and does not understand that he is required to do so for the reason that the Court can take judicial notice of whatever may be shown by the official records of the United States.

16.

Answering Request No. 24, Defendant is unable to admit or deny same, for the reason that at least one county was created after 1920, and two others were merged, and Defendant does not understand that he is required by law to undertake extensive research and computation in order to admit said request.

[fol, 66].

17.

Answering Request No's. 25, 26 and 27, Defendant says that he has records showing the total votes received by said candidate in the State and in each county, on both a popular vote and county unit basis, but Defendant has not undertaken to compute percentages, and does not understand that he is required to do so. Defendant says that the records show that the successful gubernatorial candidate received 234,690 popular votes, a plurality of all the votes cast, and 302 unit votes in the State as a whole; and 19,685 popular votes in Fulton County. Otherwise Defendant is unable to admit or deny said paragraphs.

18.

Answering Request No. 28, Defendant says that he is not a member of the State Democratic Executive Committee, but that said Committee met on April 18, 1962, and adopted rules governing holding of a primary election in 1962, and that said rules speak for themselves. Further than this, Defendant is unable to answer Request No. 28.

19.

Answering Request No. 29, Defendant is unable to admit same for the reason that Defendant has no information as to what said party officials are planning to do, and they can speak for themselves.

20.

Answering Request No's. 30 and 31, Defendant denies same, in that in 1940, the name of Eugene Taimadge appears on the general election ballot as candidate for Gov.

ernor as nominee of the "Independent Democratic Party." Defendant does not have copies of the ballot for all of said periods referred to in said Requests, and has not undertaken to do the extensive research necessary in reviewing those which he has, and does not have sufficient time in which to complete said research in time to answer said Requests.

[fol. 67]

21.

Answering Request No's. 32 and 33, Defendant states that so far as he is advised and informed, the Neill Primary Act has not been repealed, but Defendant has no record or independent recollection of any particular attempts to repeal or modify the same. Defendant does recall an amendment thereto in 1950 (Ga. Laws 1950, p. 79), which is a matter of public record. Defendant is further advised that bills are pending in the Extraordinary Session of the Georgia General Assembly now in progress which seek to modify said Act.

22.

Request No's. 34 and 35 are admitted.

This April 20th, 1962.

Service Omitted

Filed April 23, 1962

Ben W. Fortson, Jr., Secretary of State.

Sworn to and subscribed before me this April 20th, 1962.

Ann L. Adamson, Notary Public, Fulton County, Georgia.

[fol. 68]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

RESPONSE OF JAMES H. GRAY, et al. TO PLAINTIFF'S
REQUEST FOR ADMISSIONS

Come now James H. Gray, as Chairman of the Georgia State Democratic Executive Committee, and George D.

Stewart, as Secretary of the Georgia State Democratic Executive Committee, two of the defendants in the above stated matter, and answer the Request for Admissions filed by plaintiff, as follows:

1.

Defendants admit Request No. 1.

2.

Defendants admit Request No. 2.

[fol. 69]

3.

Defendants can neither admit nor deny Request No. 3, for the reason that the same is vague in that it does not state by "whom" said committee is supposed to be so recognized.

4.

Request No. 4 is admitted.

5.

Answering Request No. 5, these defendants say that the State Democratic Executive Committee has adopted rules providing for a State Democratic Primary on September 12, 1962.

6.

The answer to Request No. 5 also answers Request No. 6.

7.

Answering Request No. 7, these defendants say that the State Democratic Executive Committee will perform such duties as are required by the rules referred to in Answer No. 5 or any applicable law.

8.

Answering Request No. 8, these defendants say they have no knowledge of the plans or intentions of the Secretary of

State. They assume that he will perform his duties under the law.

9.

Answering Requests No's. 9, 10, 11, 12, 13 and 14, these defendants say that the State Democratic Executive Committee, as presently constituted, was provided for by a resolution of the State Democratic Convention held in Macon, Georgia, in October 1958. The Committee has no permanent records from which the requested information could be obtained. These defendants, as individuals, have no information or independent recollection from which they could furnish the information.

[fol. 70]

10.

Request No. 15 is denied.

11.

Answering Request No. 16, defendants have no record or independent recollection of the matters therein referred to.

12.

Answering Request No. 17, so far as known to these defendants, said Request is true, although they have no records from which the question could be accurately answered.

13.

Requests No's. 18, 19, 20 and 21 are true according to published census information.

14.

Answering Request No. 22, defendants have no information as to the authenticity of said document, and are unable to admit same.

15.

Answering Request No. 23, defendants have not undertaken to compare all of the many statistics set forth in

Exhibit "F" with copies of the official census for said years, or to obtain copies of such census and reports for that purpose, and do not understand that they are required to do so for the reason that the Court can take judicial notice of whatever may be shown by the official records of the United States.

16.

Answering Request No. 24, defendants are unable to admit or deny same, for the reason that at least one county was created after 1920, and two others were merged, and defendants do not understand that they are required by law to undertake extensive research and computation in order to admit said request.

[fol. 71]

17.

Answering Requests No's. 25, 26 and 27, defendants say that they have no permanent records showing the total votes received by said candidate in the State and in each county, on both a popular vote and county unit basis. Defendants say that they have examined the answer of the Secretary of State to this Request and, so far as they know, it is correct.

18.

Answering Request No. 28 and Request No. 29, these defendants say that the State Democratic Executive Committee met on April 18, 1962, and adopted rules governing holding of a primary election in 1962, and that said rules speak for themselves. These defendants expect to follow said rules.

19.

Answering Requests No's. 30 and 31, these defendants say that they have no records or other information from which they could answer said Requests.

20.

Answering Requests No's. 32 and 33, defendants state that so far as they are advised and informed, the Neill Primary

Act has not been repealed, but defendants have no record or independent recollection of any particular attempts to repeal or modify the same. Defendants do recall an amendment thereto in 1950 (Ga. Laws-1950, p. 79), which is a matter of public record. Defendants are further advised that bills are pending in the Extraordinary Session of the Georgia General Assembly now in progress which seek to modify said Act.

21.

Requests No's. 34 and 35 are admitted.

Buchanan, Edenfield & Sizemore, By Lamar W. Sizemore, Attorneys for James H. Gray, as Chairman of the Georgia State Democratic Executive Committee, and George D. Stewart, as Secretary of the Georgia State Democratic Executive Committee.

[fol. 72] *Duly sworn to by George D. Stewart, jurat omitted in printing.*

[fol. 73] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO DISMISS—Filed April 25, 1962

Come now the named defendants in the above stated matter, and move to dismiss the complaint on the following grounds:

1.

The court is without jurisdiction of the subject-matter of the suit. The complaint does not present a substantial federal question, because the rights and privileges which it is alleged may be violated arise only under the Constitution and laws of Georgia.

2.

The complaint fails to state a claim upon which relief can be granted.

3.

The complaint fails to state a claim cognizable by a court of equity or appropriate for declaratory relief by a court of equity, or to allege facts authorizing an injunction or declaratory relief, for the reason that the rights asserted by the complainant and alleged to have been violated are political rights and not property rights or civil rights.

4.

The acts and things sought to be enjoined do not violate [fol. 74] any private right of the complainant or work individual damage to him, and he is therefore without such interest in the subject-matter of the suit as would authorize him to maintain it. If the acts complained of constitute wrongs, which is denied, they are public wrongs, not private wrongs, and any redress therefor must be given to plaintiff by the legislative and political departments of government, and cannot be afforded him in equity by this court.

5.

The complaint fails to allege facts appropriate for declaratory relief and fails to allege the existence of an actual controversy between the plaintiff and the defendants. On the contrary, it alleges a mere apprehension of a possible future controversy.

6.

The facts alleged in the complaint fail to show that the action which it is alleged the defendants will take will result in injury or damage to the complainant, or that there is any conflict of interest between the complainant and the defendants, because it affirmatively appears from the facts alleged that unless the result of the primary election, which it is alleged will be conducted, is to nominate persons for whom the complainant did not vote or persons who failed to carry Fulton County, the complainant will have suffered

no damage or injury; and it affirmatively appears from the facts alleged that whether or not the primary will result in injury or damage to the complainant is wholly speculative.

7.

The complaint, in so far as it is proceeding against the defendant Ben W. Fortson, Jr., as Secretary of State of the State of Georgia, is in purpose and effect a suit against the State, and the State has not consented to be sued upon such a cause of action. Accordingly, this court has no jurisdiction to entertain the same.

[fol. 75]

8.

It affirmatively appears from the facts alleged that the State of Georgia is a necessary and indispensable party defendant, and since it cannot be joined, under the Eleventh Amendment to the Constitution of the United States, the Court is without jurisdiction to entertain the complaint.

9.

The Complaint fails to raise a substantial federal question, the validity of the statutes attacked having previously been upheld in *Turman v. Duckworth*, 68 F. Supp. 744 (D. C. Ga. 1946), appeal dismissed, 329 U. S. 675; *South v. Peters*, 89 F. Supp. 672 (D. C. Ga. 1950), aff'd 339 U.S. 276; and in *Cox v. Peters*, 208 Ga. 498, appeal dismissed, 342 U.S. 936.

Wherefore, defendants pray that the complaint be dismissed.

Eugene Cook, Attorney General of Georgia, B. D. Murphy, Deputy Assistant Attorney General, E. Freeman Leverett, Deputy Assistant Attorney General, Attorneys for Defendant Ben W. Fortson, Jr.; Lamar W. Sizemore, Attorney for Defendants Gray, Stewart, State Democratic Executive Committee, and State Democratic Party.

• Service Omitted.

• Filed April 25, 1962.

[fol. 76]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER OF DEFENDANTS Filed April 25, 1962

Comes now the named defendants in the above stated case and answer the complaint of plaintiff as follows:

1.

Answering paragraph 1, for want of information sufficient to form a belief, defendants are unable either to admit or deny that petitioner is a citizen of Georgia or of the United States; or that he is a resident of Fulton County, Georgia.

2.

Answering paragraph 2, defendants admit that defendant Stewart is a resident of Fulton County, and that defendant James H. Gray is a resident of Dougherty County, Georgia. The remainder of said paragraph requires no answer.

3.

Answering paragraph 3, defendants admit the defendant Gray is Chairman of the Georgia State Democratic Executive Committee, and that defendant George D. Stewart is Secretary of said Committee. The other allegations of said paragraph allege conclusions of law requiring no answer.

[fol. 77]

4.

Paragraph 4 is denied. Further answering said paragraph, defendants say that the Democratic Party of Georgia is a purely voluntary political party, without a constitution or by-laws, without a roll of members, and without identifiable members, since no law of the State requires any citizen or voter to register his political party affiliations. It has no office or place of business, and no continuity of existence.

The State Democratic Executive Committee is simply an arm or agency of the State Democratic Convention. It also has no place of business and no continuity of existence, and has only such powers as may be conferred upon it by the Convention by which it is created. Neither the party nor the committee is an unincorporated association within the meaning of the Act of the General Assembly of Georgia, approved February 13, 1959. (Ga. Laws, 1959, p. 46)

5.

Paragraph 5 alleges conclusions of law requiring no answer.

6.

Answering paragraph 6, defendants deny that Defendant Committee and Defendant Party are subject to suit for the purposes or in the manner or way alleged therein. Otherwise, said paragraph alleges conclusions of law requiring no answer.

7.

Paragraph 7 is admitted.

8.

For want of information sufficient to form a belief, defendants are unable either to admit or deny so much of paragraph 8 as alleges that plaintiff is within the "class of persons" therein referred to. Defendants say that the remainder of said paragraph seems to plead certain provisions of the Constitution of Georgia, that said Constitution is in writing and speaks for itself.

[fol. 78]

9.

For want of information sufficient to form a belief, defendants are unable either to admit or deny paragraph 9.

10.

Answering paragraph 10, defendants say that the State Democratic Executive Committee has adopted rules providing for a State Primary on September 10, 1962.

11.

Answering paragraph 11, defendants say that Code Sections 34-3212 and 34-3213 are incorrectly set out in "Exhibit B." Defendants deny that Section 34-3215.1 is set out in "Exhibit B." Further answering said paragraph, defendants say that the Statute Law of Georgia speaks for itself. They further say that any democratic primary held in the State will be held in conformity with the rules and any applicable provisions of State law.

12.

Answering paragraph 12, defendants say that Defendant Fortson has certain duties relating to elections as prescribed by law, and that he intends to perform them accordingly. Otherwise, said paragraph alleges matters of law requiring no answer.

13.

Answering paragraph 13, defendants admit that Defendant Fortson has certain duties prescribed by law, which he intends to perform. Otherwise, said paragraph alleges matters of law requiring no answer.

14.

Paragraph 14 is denied.

15.

Paragraph 15 states the contentions of plaintiff, and requires no answer. However, defendants deny that the statutes referred to are arbitrary, discriminatory or unconstitutional for any reason.

[fol. 79]

16.

Answering paragraph 16, defendants say that the Constitution and Laws of Georgia are in writing, and speak for themselves. Except as hereinabove admitted, paragraph 16 is denied.

17.

Answering paragraph 17, defendants admit that Fulton County is the most populous county in the State. The re-

mainder of said paragraph, defendants can neither admit nor deny, for want of information sufficient to form a belief.

18.

Answering paragraphs 18, 19, 20, 21 and 22, defendants say that, for want of information sufficient to form a belief, they can neither admit nor deny the correctness of the census figures pleaded therein. They say, however, that if the matters there pleaded are within the judicial knowledge of the Court, they require no answer, or proof.

19.

Answering paragraph 23, for want of information sufficient to form a belief, defendants are unable either to admit or deny the accuracy of the figures and computations therein alleged; otherwise, said paragraph is denied.

20.

Answering paragraph 24, Defendants are unable either to admit or deny the accuracy of the figures therein stated. Insofar as said paragraph seems to allege any violation of any right of the plaintiff, it is denied.

21.

For want of information sufficient to form a belief, defendants are unable either to admit or deny the accuracy of the figures set forth in paragraph 25.

[fol. 80]

22.

For want of information sufficient to form a belief, defendants are unable either to admit or deny the accuracy of the figures alleged in paragraph 26.

23.

Paragraph 27 is denied.

24.

Paragraph 28 is denied.

25.

Paragraphs 29, 30, 31, 32, 33, 34 and 35 are denied.

26.

Further answering said complaint, defendants show that the county unit system has been consistently followed in Georgia at least since 1777. Under the Constitution of 1777, the Governor was elected by the Legislature, which was composed of representatives from the counties and certain port towns. Representation was on a territorial and trade basis with little regard for population.

Under the State Constitution of 1789, the Governor was elected by the Senate, in which each county had one vote without reference to its population, from a list of three persons nominated by the House of Representatives.

The Constitution of 1798 continued substantially the provisions of the Constitution of 1789, as to the composition of the General Assembly, but provided for the election of the Governor by the entire Assembly instead of by the Senate. Under Georgia's colonial Constitution and its first State Constitution, the Governor was elected on a county unit basis. In 1823, for the first time, provision was made for election of the Governor by the people, beginning in 1825, but it was provided in that case that if no candidate had a majority of the votes, the General Assembly should elect from the two highest by a vote of the members present in the joint session. Substantially the same provisions were carried forward into every State Constitution, and are in the Constitution of 1945.

[fol. 81] In 1842, by constitutional amendment, the State was divided into senatorial districts. Each district was composed of two counties, except the county with the largest population constituted a district. Each district had one Senator. It was provided that the 37 counties having the largest population should each have two representatives and the remaining counties should each have one.

Consistently since 1823, the final choice of the Governor has been left to the General Assembly, when no candidate receives a majority of the popular vote. In elections by the General Assembly, the county unit system prevails.

Each member has one vote. Consistently since 1842 the general plan then first adopted for apportioning representation in the lower House of the General Assembly has been followed. Beginning with the Constitution of 1868, the six largest counties in population had three representatives each; the next 26 largest, two each, and the remaining counties, one each. In 1920, by constitutional amendment, the number having three representatives was increased to eight, and those having two each were increased to thirty.

The political history just set forth relates mainly to the final election of the Governor, not the nomination of party candidates.

In the early days of party politics, the members of the legislature met in party caucuses and nominated the party candidates. Before the War Between the States there were always two strong parties in Georgia, Whigs and Democrats. Thus the Whig members of the legislature would caucus and nominate the party's candidates for State offices. Gradually they came to invite to the caucuses party members from counties not represented in the legislature by Whigs. The same practice was followed by the Democrats. For this practice, Party conventions developed. County representation in the State Convention was on the basis of representation in the Lower House of the General Assembly. The delegates were usually chosen by county mass meetings. At first there was one delegate for each representative. Later there were two delegates for each representative, that is, each county had two unit votes in the State party convention for each representative in the General Assembly. The State convention nominated the party candidates for State offices. About 1880 party primaries began to be conducted and about 1891 the Democratic party adopted the primary system for selecting delegates to the State Convention in lieu of the mass meeting method. This practice continued, however, to be local and optional until about 1898, when, for the first time, the party primary as a basis for nominating candidates for State offices, came into full effect. This was about the time the Populist Party became strong. The State Convention continued to make the party nominations. It was composed of delegates from the various counties chosen as a result of

the primary and always operated on the county unit basis. Uniformly in recent years each county has had two delegates, that is, two votes in the Convention, for each of its members in the House of Representatives. The uniform practice was to require a candidate to get a majority of the unit votes at the Convention in order to be nominated. If a majority of the county unit votes was pledged to a candidate when the Convention assembled, he was nominated without question, but if no candidate had a majority, the Convention balloted until a candidate did receive a majority of all the county unit votes. Frequently the deadlock lasted for a number of days.

Prior to 1917, the county unit rule was established by party practice and party rule. There was no law on the subject. The Neill Primary Law of 1917 (Ga. Laws 1917, p. 183) simply adopted the party custom, which had been in vogue for more than a century. The only substantial change in the prevailing practice was to provide for a second primary in case no candidate for Governor or United States Senator had a majority of the county unit votes as the result of the first primary instead of having the Convention settle the matter. The Neill Primary Law is applicable to all political parties alike, but does not require any party to have a primary.

In actual practice there has only been one occasion since the Neill Primary Act of 1917 when the successful candidate for the Democratic nomination for Governor, under the county unit rule, did not receive a plurality of the popular votes. In 1946, Honorable Eugene Talmadge was nominated for Governor under the county unit rule, although another candidate received a plurality of the popular votes.

Since 1917 there has been only one occasion when the successful candidate for the United States Senate under the county unit system did not receive a majority of the popular votes. That was in 1938, when Senator Walter F. George received 282 county unit votes, a majority of all, and was nominated. He received a plurality, but not a majority of the popular votes.

In every race for the United States Senate, with the possible exception of 1920, the successful candidate under the

county unit rule has carried Fulton County. In every such case, the successful candidate had a majority of the county unit votes and at least a plurality of the popular votes.

In every primary for Governor except four, the successful candidate under the county unit rule carried Fulton County. In three of those primaries, 1932, 1934, and 1946, Honorable Eugene Talmadge was the successful candidate under the unit rule. In 1948, Honorable Herman Talmadge was the successful candidate under the county unit rule, but he did not carry Fulton County, although he did get a majority of all the popular votes.

In 1932, Eugene Talmadge had a plurality of popular votes and a majority of the unit votes, but did not carry Fulton County. In 1934, he had a majority of the unit [fol. 84] votes and a majority of the popular votes, but did not carry Fulton County. In 1940, he carried Fulton County and had a majority of the unit votes and a majority of the popular votes. He would have had a majority of the unit votes without Fulton County. In 1946, he had a majority of the unit votes, but did not have a majority or a plurality of the popular votes and did not carry Fulton County.

Defendants have set forth the political history of the State and the facts hereinbefore detailed for the information of the Court, and to show that the present county unit system simply follows the time-honored method of nominating candidates which has been in force in Georgia for many generations, and that it does not in point of fact operate unfairly or unjustly or to the injury or damage of anybody.

Defendants also show that voters in the metropolitan and urban areas have opportunities for political organization and advancement not available to voters in areas of less population density; that Georgia is the largest state east of the Mississippi River, comprising myriad combinations of rural, urban and metropolitan areas, all embracing a wide cross-section of agricultural, commercial and industrial endeavors, and having people with widely-varying economic, social and political interests; that large, efficiently-organized and well-financed groups and organizations exist in the several large metropolitan areas possessed

of the power, ability and demonstrated inclination to effectively organize and regiment political action along group-interest lines; that such opportunities for concerted and collective action are not as readily available to areas of smaller population concentration; that powerful and influential newspaper and other communication media exist in the great metropolitan centers which daily exercise their forces so as to marshal public opinion along sectional and group interest lines; that less populous areas lack equivalent or comparable means of communication capable of mobilizing public opinion in accordance with local interests; and that the county unit method of nominating candidates in primary elections is reasonably designed to give recognition to the pattern of state organization on a county unit basis, and to achieve a reasonable balance as between urban and rural electoral power.

27.

Defendants say that there is a school of political thought in Georgia, to which the plaintiff evidently belongs, which does not believe in the county unit system. Persons having such views have heretofore sought to strike down the county unit system by resort to federal litigation. In 1946, Honorable Eugene Talmadge was nominated as the Democratic candidate for Governor under the county unit system. One of his opponents received a plurality of the popular vote, but Mr. Talmadge had an overwhelming majority of the county unit votes. Certain disgruntled people, evidently dissatisfied with the result of the primary, brought a suit in the United States Court seeking to enjoin the election of Mr. Talmadge because he had been nominated under the county unit system. A three-judge Federal Court, presided over by the Honorable Samuel H. Sibley, of the United States Court of Appeals for the Fifth Circuit, held that the Georgia county unit law was valid and constitutional. That case was carried to the Supreme Court of the United States, and the Supreme Court refused to review the decision of Judge Sibley.

In 1950, a man named South, who evidently has the same political views as the plaintiff here, brought a suit through

able counsel in another three-judge court, seeking to enjoin the use of the county unit system in the 1950 primary, claiming that to do so would deprive South and his colleague, Mr. Harold C. Fleming, of the equal protection of the laws. The plaintiffs there claimed that they had been invited by the Federal Court to bring that suit because the earlier suit of *Turman v. Duckworth*, relating to the 1946 [fol. 86] primary, had been brought after the primary. They sought to enjoin use of the county unit system in 1950. They used substantially the same facts as are used here and no doubt counsel here will use the same argument as was used there. They said that the county unit system violated the rights of the plaintiffs there in the same manner as the plaintiff here now says his rights were violated. The three-judge court denied relief. The case was decided in the lower court before the Democratic Executive Committee met to fix rules in 1950. The plaintiffs carried the case to the Supreme Court of the United States and the Supreme Court of the United States upheld the action of the lower court and denied the relief sought.

The plaintiff here was not a party to that suit, but it was a class bill and in equity and good conscience he is bound by it. If he can re-litigate the questions that were litigated there, every voter in Georgia who is disgruntled or dissatisfied at the result of any future primary can re-litigate the same questions. The Supreme Court of the United States has twice passed upon the question here sought to be made, and that ought to be an end of the litigation.

28.

Defendants further answering the plaintiff's petition, say that the county unit system has not only been in force for many, many generations, ever since Georgia has been a State and before, but it is right and fair and operates in the interest of good government.

[fol. 87] Wherefore, Defendants pray that the prayers of the complaint be denied, and that Defendants be discharged with their costs.

Eugene Cook, The Attorney General of Georgia, B. D. Murphy, Deputy Assistant Attorney General, E. Freeman Leverett, Deputy Assistant Attorney General, Attorneys for Defendant, Ben W. Fortson, Jr.; Lamar W. Sizemore, Attorney for Defendants Gray, Stewart, State Democratic Executive Committee, and State Democratic Party.

[fol. 88] *Duly sworn to by Ben W. Fortson, Jr., jurat omitted in printing.*

[fol. 89] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO AMEND COMPLAINT—Filed April 25, 1962

Plaintiff moves the Court for leave to amend his complaint on file herein in the following particulars:

1.

Amend Exhibit "B" attached to said complaint by setting forth therein the language of Georgia Acts 1943, page 347, codified as Section 34-3215.1, Code of Georgia Annotated.

2.

Attached hereto and marked "Supplement to Exhibit "B" is the language of said Section 34-3215.1.

Heyman, Abram, Young, Hicks & Maloof, By Morris B. Abram, By Maurice N. Maloof.

[fol. 90]

SUPPLEMENT TO EXHIBIT "B"

34-3215.1 CERTIFICATE OF RESULT OF ELECTION.—

Immediately after the consolidation of the votes in any such primary election a certificate, showing the names of such candidates and the offices for which they are candidates, shall be filed in the office of the Secretary of State.

of this State; such certificate to be signed by the chairman and secretary of the State Committee of the political party holding such primary. Said certificate shall show by counties the total number of popular votes and the county unit votes received by each candidate in any such primary election. (Acts 1943, p. 347.)

[fol. 91]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO AMEND COMPLAINT—
April 25, 1962

The plaintiff having moved the Court for leave to amend his Complaint in the above matter by setting forth the provisions of Georgia Acts, 1943, page 347 (Section 34-3215.1, Code of Georgia Annotated) in Exhibit "B" attached to his said Complaint;

After consideration, it is ordered that Plaintiff's Complaint be amended in the particulars set forth in Plaintiff's said Motion, that is, that Exhibit "B" of Plaintiff's Complaint is amended by adding thereto the provisions of Georgia Acts, 1943, page 347 (Section 34-3215.1, Code of Georgia Annotated), attached to Plaintiff's Motion to Amend, subject to the objections of the Defendants.

This 25th day of April, 1962.

Elbert P. Tuttle, U. S. Circuit Judge.

[fol. 92]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO AMEND COMPLAINT—Filed April 26, 1962

Plaintiff moves the Court for leave to amend his complaint on file herein in the following particulars:

1.

Amend Exhibit "B" attached to said Complaint by amending the portion thereof designated as "34-3212" by striking therefrom the following language:

"which is hereby fixed as the second Wednesday in September of",

which stricken language begins on line 7 and terminates on line 8 of the first page of said Exhibit "B" and substituting in lieu thereof the following:

"which day shall be fixed by the State Executive Committee of the political party holding such primary."

2.

Amend Exhibit "B" attached to said Complaint by amending the portion thereof designated as "34-3212" by striking therefrom line 23 of the first page of said Exhibit "B" which reads:

"and published in a newspaper published at the Capitol, within"

and substituting in lieu thereof the following:

"and published at least one time in a newspaper published at the Capitol, within".

[fol. 93]

3.

Amend Exhibit "B" attached to said Complaint by amending the portion thereof designated as "34-3213" by striking therefrom the language:

"The first Wednesday in October"

which stricken line begins on the fourth line of the third page of said Exhibit "B" and terminates on the fifth line of the third page of said Exhibit "B" and substituting in lieu thereof the following:

"a day fixed by the State Executive Committee of the political party holding such primary election."

4.

Amend Exhibit "B" attached to said Complaint by amending the portion thereof designated as "34-3213" by striking therefrom the eleventh line on page 3 of said Exhibit "B" which reads:

"within ten days after said second primary election and published"

and substituting in lieu thereof the following:

"within ten days after said second primary election, and published at least one time."

5.

Amend Exhibit "B" attached to said Complaint by amending the portion thereof designated as "34-3213" by adding thereto at the end thereof on page 5 of said Exhibit "B" and immediately preceding the beginning of the portion of Exhibit "B" designated Code "#34-3214" a new and additional sentence which shall read as follows:

"The day shall be fixed by the Committee at least thirty days before the day on which said primary election is to be held."

Filed April 26, 1962.

Heyman, Abram, Young, Hicks & Maloof, By Morris
B. Abram, By Maurice N. Maloof.

[fol. 94] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING LEAVE TO AMEND COMPLAINT—
April 26, 1962

Plaintiff having moved the Court for leave to amend his Complaint in the above matter by amending Code Sections 34-3212 and 34-3213 which are set forth in said Exhibit "B" attached to his said Complaint,

After consideration, it is ordered that Plaintiff's Complaint be amended in the particulars set forth in the attached and foregoing Motion of Plaintiff to amend, subject to the objections of the Defendants.

This 26 day of April, 1962.

Elbert P. Tuttle, U. S. Circuit Judge.

[fol. 95] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION TO AMEND COMPLAINT ALLOWED BY VERBAL
ORDER OF COURT AND FILED IN OPEN COURT—

April 27, 1962

Plaintiff moves the Court for leave to amend his Complaint on file herein in the following particulars:

1.

Plaintiff moves to amend his said Complaint in the above styled case by adding two new and additional paragraphs thereto which new paragraphs shall be numbered as Paragraphs 36 and 37 and shall follow immediately after Paragraph 35 of said Complaint, which new paragraphs shall read as follows:

"36

Plaintiff shows that any system whereby the individual votes cast in the forthcoming Democratic Primary election are consolidated on a county wide basis or by any other geographical grouping in such a manner as to cause the vote cast by petitioner in said election to have less value than the vote cast by any other voter in such election residing outside of Fulton County violates the equal protection clause of the Fourteenth Amendment of the Federal Constitution and the Seventeenth Amendment of the Constitution of the United States.

"37"

Plaintiff shows that after the filing of his Complaint in the above entitled action the General Assembly of Georgia has enacted an amendment to the said Neill Primary Act set [fol. 96] forth in Exhibit "B" to Plaintiff's Complaint, which amendment provides in substance that the total number of units shall be 547 of which Fulton County shall receive 40. Plaintiff shows that said amendment does not cure the unconstitutionality of the said Neill Primary Act. Rather said Amendment itself, as well as said Neill Primary Act as amended, contrive to violate the Fourteenth and Seventeenth Amendments to the Constitution of the United States in the manner previously set forth herein by placing Petitioner in a class of persons discriminated against without jurisdiction or reasonable basis in that said Act as amended creates an arbitrary and unconstitutional classification among voters of the State based solely upon geographical location of residents and deprives Petitioner of his constitutional right to vote for United States Senator and to be free from discrimination in exercising his franchise."

2.

Plaintiff moves to amend the prayers of his Petition by adding thereto two new and additional prayers to be designated as prayers "(g)" and "(h)" which shall follow immediately after prayer "(f)" and which shall read as follows:

"(g)"

"Petitioner further prays that the Court issue its declaratory judgment holding that the said Neill Primary Act as amended on April 27, 1962, by the General Assembly of Georgia to be void and unconstitutional insofar as said amended act provides for the nomination by Defendant party of any candidate for United States Senator or statewide office under any "County Unit" or "Geographical Unit" System whereby individual votes cast in said election are consolidated by geographical groupings and assigned values other than one unit for each popular vote cast.

[fol. 97]

... (h)

Petitioner further prays that Defendant party and Executive Committee and Defendants Gray and Stewart be each restrained and enjoined with respect to the forthcoming Democratic Primary election to be held September 12, 1962 and any primary election hereafter conducted by said Defendant party from tabulating ballots cast in such primary and selecting any nominee, and publishing and certifying the nomination of any candidate and conducting and governing any primary election and from supervising the tabulation and consolidation of votes cast in any such primary election on any basis other than a popular vote basis where by each individual vote cast in such primary is given equal weight with every other vote cast in such primary."

Heyman, Abrami, Young, Hicks & Maloof, By Morris
B. Abram, By Maurice N. Maloof.

[fol. 98]

PLAINTIFFS' EXHIBIT 4

(Letterhead of Fulton County, Atlanta 3, Georgia)

TO WHOM IT MAY CONCERN:

This is to certify that JAMES O. H. SANDERS registered and qualified for voting purposes in this office on Sept. 2, 1941, giving age as 44. Date of birth shown on registration record is Nov. 15, 1896. Address shown on registration record is: 67 Blackland Rd. N. W. Place of birth Mt. Pleasant, South Carolina. Mother's maiden name Frances Sanders.

LEON G. HAY, Chief Registrar
Fulton County, Georgia

By /s/ NORMA T. HAYGOOD

Deputy

[SEAL]

The above Mr. James O. H. Sanders is a registered qualified voter in Fulton County, Georgia, as of this date. April 25, 1962.

/s/ YOUNG HOWELL
Young Howell
Fulton County Registrar

PLAINTIFFS' EXHIBIT

**RULES
AND
REGULATIONS**

**OF THE
State Democratic
Executive Committee
of Georgia**

**GOVERNING
DEMOCRATIC PRIMARY
ELECTIONS**

ADOPTED APRIL 18, 1962

STATE DEMOCRATIC EXECUTIVE COMMITTEE OFFICERS

James H. Gray, *Chairman*
The Albany Herald
Albany, Ga.

James S. Peters, *Vice-Chairman*
Manchester, Ga.

Mrs. Bruce "Orville" Schaeffer, *Vice-Chairman*
Toccoa, Ga.

Wallace L. Jernigan, *Vice-Chairman*
Homerville, Ga.

Anton F. Solms, *Vice-Chairman*
Realty Building
Savannah, Ga.

R. Carter Pittman, *Vice-Chairman*
P. O. Box 891
Dalton, Ga.

Glenn W. Ellard, *Vice-Chairman*
Cornelia, Ga.

Charlie Baldwin, *Vice-Chairman*
Madison, Ga.

DeNean Stafford, *Vice-Chairman*
Tifton, Ga.

George D. Stewart, *Secretary*
711 Hurt Building
Atlanta 3, Ga.

Eric Holmes, *Asst. Secretary*
324 Fulton Federal Building
Atlanta 3, Ga.

Dave Padgett, *Treasurer*
P. O. Box 4418
Atlanta 2, Ga.

George M. Bazemore, *Pres.*
First National Bank
Waycross, Ga.

STATE AT LARGE COMMITTEEMEN

George T. Bagby
Dallas, Ga.

Mac Barber
Commerce, Ga.

J. Mack Barnes
Waycross, Ga.

John B. Bedingfield
Box 244
Dublin, Ga.

Dr. John Bell
Dublin, Ga.

Valene Bennett
Alma, Ga.

James L. Bentley, Jr.
1021 William-Oliver Bldg.
Atlanta 3, Ga.

D. Braxton Blalock, Jr.
1224 Johnson Ferry Road, N.E.
Atlanta 5, Ga.

Edgar Blalock
Jonesboro, Ga.

Charles J. Bloch
Suite 520, First National Bank Bldg.
Macon, Ga.

William R. Bowdoin
3828 Wieuca Road, N.E.
Atlanta 5, Ga.

Garland T. Byrd
Butler, Ga.

Lee Carter
Hartwell, Ga.

William M. Crim
95 Merritts Ave.
Atlanta, Ga.

Fred Derrick, Sr.
Clayton, Ga.

Whitfield R. Forrester
First State Bank Bldg.
Cordele, Ga.

Ed T. Fulford
Dawson, Ga.

Sims Garrett, Jr.
1006 Bolder Crest Drive
Marietta, Ga.

Peter Zack Geer
Colquitt, Ga.

Mrs. Will Gholston
Comer, Ga.

James L. Gillis, Jr.
Soperton, Ga.

James D. Gould
1608-12 Newcastle
Brunswick, Ga.

- Charles L. Gowen
434 Trust Company of Georgia Bldg.
Atlanta, Ga.
- Roy V. Harris
1007 Southern Finance Bldg.
Augusta, Ga.
- E. L. Hatton
Hazlehurst, Ga.
- Ben A. Hodges
Waycross, Ga.
- Howell Hollis
Columbus, Ga.
- Buford Ingle
Resaca, Ga.
- Roy R. Kelly
Monticello, Ga.
- James C. Mann
Conyers, Ga.
- Byron H. Mathews, Jr.
Newnan, Ga.
- Marvin E. Moate
Sparta, Ga.
- John R. McCannon
124 McDonough Street
Jonesboro, Ga.
- Robert C. Norman
Augusta, Ga.

Sheriff Lynn J. Norris
Thomson, Ga.

James C. Owen, Jr.
Griffin, Ga.

Dixon Oxford
Dawson, Ga.

Mrs. B. E. (Ruth) Pelham
Ellaville, Ga.

Henry Peskin
Winder, Ga.

G. B. (Jake) Pollard
Appling, Ga.

Ralph Primm
Rome, Ga.

James G. Raines
Dawson, Ga.

Jack B. Ray
Warrenton, Ga.

Oscar Roberts
Carrollton, Ga.

J. Mack Robinson
3525 Northside Drive, N.W.
Atlanta 5, Ga.

Carl E. Sanders
Augusta, Ga.

Sheriff J. O. (Jim) Sikes
Folkston, Ga.

George L. Smith, II
Swainsboro, Ga.

Mrs. Lucile Tate
Tate, Ga.

William P. Trotter
LaGrange, Ga.

Frank S. Twitty
Camilla, Ga.

Robert D. Tysinger
Carrollton, Ga.

John B. Walker
McRae, Ga.

William A. Ward, Jr.
507 North Atlanta St.
Smyrna, Ga.

Louis Warlick
Adairsville, Ga.

Hugh Whitworth
Lavonia, Ga.

Sid Williams
Austell, Ga.

Grady Williamson
Vienna, Ga.

Jimmy Williamson
Darien, Ga.

LIST OF COMMITTEEMEN FROM THE CONGRESSIONAL DISTRICTS

First District

James Darby
Vidalia, Ga.

Ralph Dawson
Ludowici, Ga.

Robert Gray Dwelle
Millen, Ga.

Duncan A. McRae, Jr.
Mt. Vernon, Ga.

Paul Stone
Waynesboro, Ga.

Everett Williams
Statesboro, Ga.

Second District

Hubert Eskew
Cairo, Ga.

Jimmy Hill
Blakely, Ga.

Harley Mitchell
Quitman, Ga.

Fred Scott, Jr.
Thomasville, Ga.

Ed Stapleton
Donalsonville, Ga.

Robert Wright
Moultrie, Ga.

Third District

G. A. Cauley (Sheriff)
Fitzgerald, Ga.

Nelson Coffin
Cuthbert, Ga.

Jim Ferguson
Dawson, Ga.

Robert Lee
Leesburg, Ga.

Walter Rylander
Americus, Ga.

Judge Charles W. Worrill
Cuthbert, Ga.

Fourth District

Frank W. Allcorn, Jr.
Warm Springs, Ga.

Virgil Bledsoe
Franklin, Ga.

Bill Lee
Forest Park, Ga.

Quimby Melton, Jr.
Griffin, Ga.

Otis Nixon
Covington, Ga.

Hayne Waldrop
Villa Rica, Ga.

Fifth District

Ivan Allen, Jr.
29 Pryor Street, N.E.
Atlanta 3, Ga.

Jesse Draper
Grant Bldg.
Atlanta 3, Ga.

Harold W. Ivey
3133 Maple Drive, N.W.
Atlanta 13, Ga.

Abit Massey
Decatur, Ga.

Guy Rutland, Jr.
703 Clairmont Avenue
Decatur, Ga.

Conrad Sechler
Tucker, Ga.

Sixth District

Hal Bell
406-7 Grand Bldg.
Macon, Ga.

Tom Carr
Sandersville, Ga.

Phillip Chandler
Milledgeville, Ga.

Tom Green
First National Bank & Trust Co.
Macon, Ga.

Sheriff John Stanley
Louisville, Ga.

Seventh District

J. R. (Ray) Bates
Dalton, Ga.

Judge John Davis
Summerville, Ga.

Alpha Fowler
Douglasville, Ga.

Charles Pannell
Chatsworth, Ga.

Judge Arthur Peck
Trenton, Ga.

Eighth District

Ward Harrison
Folkston, Ga.

William Killian
Brunswick, Ga.

Judge H. Langdale
Valdosta, Ga.

Sheriff Robert Lee
Waycross, Ga.

Downing Musgrove
Homerville, Ga.

Mrs. Eugene Talmadge
McRae, Ga.

Ninth District

Carl Barrett
Holly Springs, Ga.

James A. Dunlap
Gainesville, Ga.

Mose Gordon
Commerce, Ga.

Frank "Dick" Gross, Jr.
Toccoa, Ga.

Fred Jones
Dahlonega, Ga.

Charlie Maloof
Helen, Ga.

Tenth District

Phil Campbell
Watkinsville, Ga.

Julian Cox
Athens, Ga.

Charles H. Evans, Jr.
Warrenton, Ga.

Robert E. Lee
Elberton, Ga.

Sam P. McGill
Washington, Ga.

Henry G. Neal
Thomson, Ga.

BE IT RESOLVED by the Executive Committee of the Democratic Party of Georgia duly assembled in regular session on April 18, 1962 in the City of Atlanta as follows, to-wit:

I.

That a Democratic Primary election be held on September 12, 1962 in each of the counties of this State for the nomination of candidates of the Democratic Party for the following offices, whether for full or unexpired terms, or both, to-wit:

United States Senator, Governor, Lieutenant Governor, Secretary of State, Comptroller General, Commissioner of Agriculture, Attorney General, Commissioner of Labor, Treasurer, State School Superintendent, Public Service Commissioners, Justices of the Supreme Court, Judges of the Court of Appeals, Representatives in Congress of the United States from the various Congressional Districts of the State, Judges of the Superior Courts and Solicitors General required by law to be elected in the general election this year, Senators from the various Senatorial Districts (except as Rule XXVI herein may be applicable), Representatives in the General Assembly from the various counties (except as Rule XXVI herein may be applicable), members, respectively, of the several County Democratic Executive Committees, and such other offices

as are to be filled in the general election this year, 1962, for which candidates should be nominated in the Statewide Primary. The Chairman and Secretary of this Committee are directed to include such offices as may be omitted or which, owing to later developments, should be included.

The entries for the State Primary shall close May 5, 1962, at 12:00 o'clock noon, Eastern Standard Time.

II.

The primary election shall be conducted in accordance with the laws of this State and the customs of the Party, in so far as they do not conflict with existing laws and these rules.

All duly registered electors are qualified to vote in said primary if they possess the legal qualifications prescribed in Paragraph II, III, and IV of Section I, Article II, of the present Constitution of Georgia, and in addition there-to are qualified in accordance with the rules and regulations of the Democratic Party of Georgia governing the said primary as herein contained, or as may be promulgated by proper authority of the Party prior to the holding of the said primary.

In addition to being a qualified and registered voter according to law and in accordance with the rules and regulations of the Party, a voter must pledge himself or herself to sup-

port in the general election to be held in November, 1962, all candidates nominated by the Democratic Party of Georgia in this primary, or in any run off or special primary held in Georgia by said Party, for the nomination of county, district, or state offices, preceding the general election aforesaid, and does by voting in said primary so pledge himself or herself.

The County Executive Committee of the Party holding the primary in each County and/or the Managers in charge of the primary are hereby empowered to decide whether or not a person offering to vote, is qualified under the provisions of this rule.

III.

It shall be the duty of the Democratic Executive Committee of each county to select and properly advertise the legal place or places of voting in each election precinct of the county; to select, or provide for selecting, capable managers and clerks for conducting the primary and administer the oaths to them; to furnish said managers a list of all registered and qualified voters in the respective districts; to see to printing and proper distribution of all necessary blanks and ballots; and to make all other necessary arrangements for holding such primary election in their respective counties. In selecting managers and clerks, they shall, so far as practicable give recognition

to all candidates. The polls shall open at 7:00 o'clock A.M., Eastern Standard Time, and close at 7:00 o'clock P.M., Eastern Standard Time, except where otherwise provided by local laws.

IV.

The Secretary of this committee shall prepare an official ballot containing the names of all qualified candidates for nomination to the various offices filled by statewide vote and forward the same to the Chairman of each County Committee; and such Chairman of each County Committee shall follow the form of said official ballot in having ballots for his county printed, taking care to see that the names of all legally qualified candidates for nomination of officers to be voted on in said county at said primary election are printed thereon as worded in the official ballot.

In those counties where voting machines are used when authorized by law, the form of said official ballot shall be followed in naming the incumbent official to be succeeded and in describing the office to be filled.

V.

No person shall be deemed a candidate in said primary unless he is legally qualified to hold the office for which he announces is a valid member and adherent of the Democratic Party of Georgia, gives the notice hereinafter

required, pays the assessments hereinafter prescribed, by the time hereinbefore named, and complies with all the requirements of these rules. The voter shall erase from the ballot the names of those persons for whom he does not desire to vote, leaving on said ballot only the names of those persons for whom he desires to vote, unless voting machines are used in the county, in which case the County Democratic Executive Committee shall prescribe rules governing marking the ballot. If more than one candidate is to be nominated for a particular office each voter shall vote for as many persons as there are nominations to be made; otherwise his vote for candidates for that particular office shall not be counted. No ballot shall be counted which does not conform to the official ballot.

VI.

Candidates for United States Senator, Governor, Lieutenant Governor, Secretary of State, Comptroller General, Commissioner of Agriculture, Attorney General, Commissioner of Labor, Treasurer, State School Superintendent, Public Service Commissioners, Justices of the Supreme Court, and Judge of the Court of Appeals who receive respectively the highest number of votes in each county, shall be considered to have carried that county and entitled to the full vote of such county on the county unit basis, that is to say, two votes for each Representative to which such county is

entitled in the lower House of the General Assembly, and if any two or more candidates should tie for the highest number of popular votes received in any county, the county unit vote of such county shall be equally divided between the candidates so tying.

VII.

All candidates for Judges of the Superior Court and Solicitors General shall be voted for only in the counties of their respective circuits; and the candidates receiving the largest number of popular votes in their respective circuits shall be declared the Democratic nominees; and where two or more are to be nominated for concurrent terms in the same circuit, each candidate in such primary shall be required to designate the place sought by naming the incumbent, and it shall so appear on the ballot.

VIII.

In so far as the primary relates to the nomination of candidates for Congress from various Congressional Districts, such candidates shall be voted for only in the counties comprising their respective districts; and the Congressional Democratic Committee of each District shall determine whether the county unit or popular vote plan shall prevail. Each such Congressional Democratic Committee may adopt rules and regulations, not in conflict with these rules and regulations as it may

deem proper, and may provide for holding a Democratic Convention in such District at such time and place, and under such rules and regulations, as such Congressional Committee may adopt.

IX.

The County Democratic Executive Committee of each County shall on the 13th day of September, 1962, at 10:00 o'clock A. M., Eastern Standard Time, meet at the court house in said County, canvass and declare the result as shown by the returns made by the various elections managers; the Chairman of each County Committee shall certify the results and transmit same to the Secretary of the State Democratic Executive Committee at once as time is of the essence.

The Chairman and Secretary of the State Democratic Executive Committee shall consolidate and publish the results of said election as shown by the returns certified by the various County chairmen and shall certify the names of all Party nominees to the proper officials at least forty-five days before the general election of 1962.

X.

In making the compilation the following rules shall be adhered to:

The county unit rule, as hereinbefore prescribed shall prevail inviolate in making nomi-

nations of candidates for all offices filled by statewide vote.

The candidate for United States Senator and Governor who receives a majority of County unit votes for the nomination sought, shall be declared the nominee of the Democratic party for the office in question; and in each case the unit vote of all counties carried by each candidate shall be counted for such candidate.

If there are only two candidates for United States Senator or Governor and they shall each receive an equal number of county unit votes, the one who shall have received a majority of popular votes shall be declared the nominee of the party for said office.

If there are more than two candidates for United States Senator or Governor and no candidate for that office receives a majority of all the county unit votes, there shall be a second primary for such office, as herein provided, at which the two candidates receiving the highest number of county unit votes at the first primary shall be candidates for United States Senator or Governor. If the result of the second primary shall be that the candidates for United States Senator or Governor shall each receive an equal number of county unit votes (that is, if each such candidate shall receive one-half of the whole number of county unit votes), then the candidate receiving the highest number of popular votes shall

be declared the nominee for such office.

In the event it becomes necessary to hold a second Primary for a nominee for United States Senator or Governor the same shall be held on September 19, 1962, in accordance with the rules of the State Democratic Executive Committee and provisions of law applicable thereto.

In the event of a second Primary, the result of the Primary shall be consolidated and published by the Chairman and Secretary of the State Democratic Executive Committee after the County Chairmen have consolidated the returns in each County at ten o'clock A.M. Eastern Standard Time, September 20, 1962, and forwarded the results to the Secretary of the State Democratic Executive Committee immediately thereafter. The Chairman and Secretary of this Committee shall certify the name of the Party nominee of such second Primary to the proper officials not later than three days after such second Primary.

The candidate for offices to be filled by statewide vote (but not including Judges of the Superior Courts and Solicitors General) who receive the highest number of county unit votes, shall be declared the nominees of the Democratic Party for such offices. If the two highest candidates for any office receive the same number of county unit votes, the one who receives the largest number of popular votes in the primary shall be declared the nominee.

XI.

If there shall be a recount of the ballots in any county pursuant to the Act of the General Assembly of Georgia approved March 27, 1941, as amended by an Act approved Feb. 15, 1962, known as the Primary Election Recount Act, the certification of the result of the primary election in such county, made pursuant to these rules, shall be superseded by the result of the recount of the ballots as made by the Committee provided for by said Act of March 27, 1941, as amended, upon the report thereof being filed with the Executive Committee of the County, if the recount relates to a county office, and upon such report being filed with the Chairman of this Committee if the recount relates to an office other than a county office.

The consolidation of the result of the primary which the Secretary of this Committee is required to make shall show the result of the primary as certified under the provisions of these rules, as the same may be corrected by reason of any recount of ballots made pursuant to said Act as amended.

XII.

All contests of said primary election which shall require a recount of the ballots shall be conducted under and in conformity with said Act approved March 27, 1941 as amended. Should any candidate desire to contest the result of the

primary election in any county upon grounds not contemplated or provided for by said Act approved March 27, 1941, as amended, he shall, within five days from the date of said primary, file with the Secretary of the County Executive Committee a written notice of said contest, which shall set forth in detail the grounds thereof. In the absence of the Secretary, such notice may be filed with any member of the County Executive Committee.

It shall be the duty of the Chairman of the County Executive Committee to call a meeting of the County Executive Committee after giving two days' notice thereof to the parties in such contest and the County Executive Committee shall, at such meeting, proceed to hear and determine the contest. The Chairman of the County Committee shall certify to the Secretary of the State Executive Committee the returns and results in such county as soon as the contest is heard and determined, which shall in no event be later than ten days after the filing of the notice of the contest. Either party to such contest who is dissatisfied with the determination of the County Executive Committee may appeal in writing to the State Executive Committee. Such appeal must be filed with the Secretary of the State Executive Committee within five days after the contest is determined by the County Committee and must show by affidavit that a copy thereof was served upon the opposite party to the contest before its filing with the Secretary of

the State Committee. Said contest shall be heard and decided by the Contest Committee named by the State Chairman. The appeal shall be heard upon the evidence submitted to the County Executive Committee and no new evidence shall be submitted to the Committee except newly discovered evidence.

The appellant shall file a copy of his appeal with the secretary or chairman of the County Committee hearing the contest and it shall be the duty of the Chairman and Secretary of the County Committee, within three days from the filing of the copy of the appeal with the secretary of the County Committee, to transmit to the Secretary of the State Executive Committee the findings of the County Committee and a complete transcript of the evidence upon which such findings were made and all records of the contest. This record shall be verified by the affidavit of the Chairman and the Secretary of the County Committee. When the contest is determined the result of its determination shall be certified to the Chairman of the County Executive Committee, where the contest originated, by the Secretary of the State Executive Committee. The finding of the Contest Committee on such contest shall in all cases be final and conclusive of all the rights of the parties to the contest, and the County Executive Committee in making its certificate of Democratic nominees to the proper county or state authority

for the general election, shall be bound thereby and certify in conformity therewith.

XIII.

No candidate in said primary election shall be declared the nominee of the party for any office if it is proved that in the conduct of his campaign for the nomination he violated any election law of Georgia, or in case of candidates for the National Congress, any election law of Georgia or of the United States.

XIV.

The State Democratic Executive Committee is hereby called to meet at eleven o'clock a. m., Eastern Standard Time in the City of Atlanta on the 21st day of September, 1962, to canvass the result of said primary election in accordance with these rules and nominate candidates in conformity with such results and direct the certification of the nominees to the proper officials and to attend to such other business of the party as may be properly brought before the committee. The Chairman of the Committee shall select a suitable place for holding such meeting.

XV.

In the event of a second primary election, the special subcommittee, acting in conjunction with the Chairman and Secretary of this Com-

mittee, referred to hereafter shall have full power and authority to levy reasonable assessments upon the candidates participating in said second primary, and to make such other rules and regulations regarding it, not in conflict with the laws of Georgia and the rules of this Committee, as may be necessary.

XVI.

The candidates for United States House of Representatives who are nominated in this primary shall appoint a Congressional Committee to serve for the next two years, which Committee shall meet immediately upon its appointment and organize by electing such officers as it determines necessary. Vacancies in any Congressional Democratic Executive Committee shall be filled by appointment of the Congressional incumbent provided he is a Democrat, otherwise vacancies shall be filled by the Committee.

The State Senatorial candidate in each Senatorial District in this State who is nominated at this primary may name a Senatorial Committee to serve for two years, who shall meet and organize by electing such officers as it deems necessary. Vacancies occurring on said Committee shall be filled by appointment of the Senatorial incumbent provided he is a Democrat, otherwise vacancies shall be filled by the Committee.

XVII.

There is hereby created a sub-committee to be known as the Special Primary Sub-Committee which shall be composed of the Chairman and Secretary of the State Democratic Committee and five members of the State Democratic Executive Committee, named by the Chairman, which said Sub-Committee shall handle details of the primary subject to these rules. The said sub-committee is authorized and empowered further to amend these rules and make such other rules and regulations relating to all statewide primaries held in 1962 as in its discretion it may deem advisable.

XVIII.

No manager, clerk or other officer engaged or officiating in any primary shall give out, make known, or furnish, during the progress of such primary, any information concerning the number of votes that have been polled for any candidates.

XIX.

The ballots at said primary shall be publicly counted and the count shall not be begun until the polls are officially closed.

XX.

These rules shall remain in full force and effect and apply where applicable to all Party matters until repealed or modified.

XXI.

Any person dissatisfied with any decision of the local county or district committee shall have the right of appeal to the State Executive Committee and the State Executive Committee shall have the right to determine said issue in accordance with the law and these rules and customs of the party.

XXII.

The chairman and secretary of each county committee shall certify the results of the election for nomination to the United States House of Representatives and transmit the same to the Secretary of the proper district committee at once, except in case of contest, and in case of contest, as soon as the contest before the county committee has been determined; and it shall be the duty of said secretary to present said returns, with proper consolidation thereof, to the district convention herein provided for.

XXIII.

All of the rules for contest as provided in these rules shall be binding upon the county committees and shall be applicable to Congressional candidates, except that certification shall be made from the county committees to the chairman and secretary of the Congressional Committee as herein provided, which shall be laid before the district convention

and such convention shall determine the result of the election in such race in the same manner as contests are determined under these rules by the state convention, when in session.

XXIV.

Entrance fees for candidates for the various offices are assessed as follows:

United States Senator	\$1,500.00
Governor	1,500.00
Lieutenant Governor	1,000.00
Justices of the Supreme Court and Judges of the Court of Appeals	750.00
Public Service Commissioners	750.00
Secretary of State	750.00
Comptroller General	750.00
Commissioner of Agriculture	750.00
Attorney General	750.00
Commissioner of Labor	750.00
Treasurer	750.00
State School Superintendent	750.00
United States House of Representatives	750.00
Judges of the Superior Courts	500.00
Solicitors General of the Superior Courts	350.00

Candidates for the General Assembly are to be assessed by the Democratic Executive Committee of the Counties in which they are candidates.

Candidates for U. S. Senate, U. S. House of Representatives, and all State House offices, including Governor, Lieutenant Governor, Secretary of State, Comptroller General, Commissioner of Agriculture, Attorney General, Commissioner of Labor, Treasurer, State School Superintendent, Public Service Commissioners, Justices of the Supreme Court, Judges of the Court of Appeals, Judges and Solicitors General of the Superior Courts, but not including members of the General Assembly, shall pay said fees to the Chairman or Secretary of the State Democratic Executive Committee who shall maintain an office in the State Capitol building, on or before the closing date herein provided for, accompanied by a statement signed by the candidate naming the office for which he enters and pledging himself to abide by the results of the primary. If the office is one for which two or more persons are to be nominated he shall describe the place he seeks by naming the incumbent.

Candidates for the General Assembly of Georgia shall pay their assessments to and qualify with the Chairman or Secretary of the County Democratic Executive Committee in the County where they propose to run.

No other assessments or qualifications shall be required of any candidate except in the case of candidates for Judges and Solicitors of the various Superior Court circuits. The Democratic Executive Committee of any coun-

ty having a population of more than 70,000 may assess an additional fee up to but not to exceed \$2,500.00 against candidates for Judges and Solicitors General of the Superior Courts which must be paid before the name appears on the official ballot.

The fees paid to the Chairman or Secretary of the State Democratic Executive Committee by candidates for Judge and Solicitors of the various Superior Court circuits shall be remitted to the Democratic Executive Committee of the respective counties of each circuit in the proportion that the county unit votes of any particular county bear to the county unit votes of the counties constituting the circuit.

The assessment paid by candidates for United States House of Representatives shall be divided by the Secretary and Chairman of the State Democratic Executive Committee to the various County Committees in the respective Congressional Districts, as provided in the foregoing paragraph.

The Chairman and Secretary of the State Democratic Executive Committee are authorized to make assessments and prescribe qualifications for candidates for any office which might not be provided for by these rules.

The various County Committees or Congressional Committees may fix closing dates for State Senate, House of Representatives, and

the United States House of Representatives, earlier but not later than the one fixed by these rules provided an announcement shall be made by such change in the local newspapers at least ten days prior to the closing date thus fixed. Those previously so fixed are hereby ratified and confirmed.

In the event no candidate is nominated for any office as a result of the Primary election or any nominee dies before the general election, or any vacancy occurs in any nomination for any reason, this Committee shall nominate a candidate, and fill such a vacancy. In the event a Candidate dies between the date of the closing of the entries and the date of the Primary the entries shall reopen for a period of two days, not including the day of the death.

All funds now or hereafter in the hands of the Treasurer of this Committee shall be paid out by him for any expenses in connection with this Committee and for the advancement of the Party only upon the written approval of the Treasurer and Chairman of said Committee, said Treasurer and Chairman being authorized and requested to raise necessary funds and to expend same in their discretion for the promotion and advancement of the Democratic Party.

XXV.

In addition to rules already in force, it is hereby provided County Committees shall

choose their Chairman and Secretary, and all their officers, from members of the Committee. The Committee can be convened at any time by five days' notice by an officer, or by a majority of its members, or as may be provided by rule of the County Committee.

XXVI.

Any person nominated as a Democratic Candidate for membership in the General Assembly of Georgia (Senate or House of Representatives) at a county primary, as authorized by an Act of the General Assembly of Georgia approved February 20, 1956 (Ga. Laws 1956, p. 159) and as amended by an Act of the General Assembly of Georgia approved February 15, 1960 (Ga. Laws 1960, p. 115) which permit, subject to the limitations expressed in said Acts, the nomination of candidates for the General Assembly at county primaries in counties having a population of 115,000 or less, shall be the nominee of the Democratic Party for such office without becoming a candidate at the State primary to be held September 12, 1962, and shall be so certified by the proper officials of the Democratic Party.

XXVII.

The State Democratic Convention is hereby called to meet at ten o'clock A.M., Eastern Standard Time, in the City of Macon, on September 28, 1962, in which Convention each

County shall be entitled to two County unit votes for each representative to which such County is entitled in the lower House of the General Assembly. Said Convention shall canvass the result of said Primary Election in accordance with these rules and nominate candidates in conformity with said results and shall approve the certification of such nominees to the proper officials; select a new State Executive Committee and officers, adopt a platform, and attend to such other business of the party as may be brought before it.

If for any reason a suitable place for holding said Convention in said City of Macon cannot be arranged for or the expenses be too great, the Chairman of the State Executive Committee shall have authority to designate a place for said Convention to be held.

XXVIII.

The County Democratic Executive Committee of each county shall select from among the friends and supporters of the successful candidate for Governor in each county delegates to the State Convention in the ratio of two for each representative to which such county is entitled in the lower House of the General Assembly, with an equal number of alternates. The delegates and their alternates shall be instructed to cast the vote of their county for the candidate for United States Senate, Governor and State House Officers, including Jus-

tices of the Supreme Court and Judges of the Court of Appeals, who carried said county at the primary election as hereinbefore provided. It shall be the duty of the County Chairmen in advance of the Convention to furnish the Secretary of this Committee with the names of the delegates and alternates with written credentials.

XXIX.

The Democratic electors of each county shall elect a County Democratic Executive Committee at the Primary herein provided for, which shall consist of at least one member from each Militia District or each city ward, but the County Executive Committee may, if it deems proper, provide for a larger number. Each such district and city ward shall have equal representation. Suitable blanks shall be left at the foot of the official ballot for the voters to write in the names of the person or persons for whom they desire to vote as members of the County Executive Committee, and the ballots shall indicate the number to be elected from each district or ward. The plurality rule shall govern in determining the election of members of the county committee. The County Executive Committees may require that candidates for the county committee qualify as such candidates, and provide for printing their names on the official ballot: Provided, however, that in every county the election of County Committeemen be left to the County Com-

mittee as to whether or not the Committeemen shall be elected county-wide or by militia districts or wards, in the primary and they shall not be chosen at mass meetings.

The members of the County Executive Committee elected at the primary shall assume office as such on the day following that on which the State Convention hereinbefore provided for is actually held. They shall hold office for a term of four years from that date. No person shall be eligible to election as a member of the County Democratic Executive Committee except bona fide Democratic electors who are registered voters and who pledge themselves to support Democratic nominees of the Democratic Party of Georgia in State elections.

In case any County Committee is not organized and has no rules, after five days' written notice by any member of said County Committee to each member thereof, said Committee shall convene for the purpose of organization and elect a Chairman, Vice-Chairman, Secretary and such other officers as it sees fit. Each County Committee shall make such rules as it sees fit not inconsistent with these rules. All vacancies in the County Committee shall be filled by election by the remaining members of the Committee.

In the event any county fails to elect a County Committee as provided herein, the Chairman of the State Committee is authorized

to name a Committee for such County to serve
for a period of the remainder of the unexpired
term of four years.

[fol. 100]

PLAINTIFFS' EXHIBIT 8

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

CIVIL ACTION No. 7872

JAMES O'HEAR SANDERS

vs.

JAMES H. GRAY ET AL

GEORGIA
FULTON FULTON

PERSONALLY APPEARED before me the undersigned officer duly authorized by law to administer oaths, LESLIE J. GAYLORD, who, after being sworn, deposes and says on oath as follows:

Deponent says that her qualifications are as set forth in the affidavits previously filed by her in this case.

Your deponent attaches hereto and makes a part of this affidavit, as Exhibit A, a chart showing 1890, 1910 and 1960 total population figures, and then showing the percentage of unit votes of counties comprising 50% of the population taken in descending order, would have of unit votes available under the county unit rule as it prevailed in 1890, and 1910, and under the Neill Primary Act as it prevails today and under the 547 unit proposal contained in H.B. #1 in Extraordinary Session. Your deponent shows that whereas in 1890, counties having 50.8% of the population had 47.0% [fol. 101] of the unit vote and in 1910, 44.8% of the unit vote, such counties in 1960 have only 18.5% of the unit vote under the Neill Primary Act and would, under the 547 unit proposal, have but 32.2%. Moreover, your deponent shows that said 32.2% applicable to the 547 unit proposal would

be reduced to 31.1% if the calculations were made on the basis of counties having 50% of the population of voting age rather than raw population.

With respect to the 547 unit proposal, your deponent points out that the disparities inherent therein grow by year as population between censuses grow in the larger counties and decline in the smaller ones.

Your deponent attaches as Exhibit B a table showing counties in which negro registration in 1958 (according to the figures obtained from the Secretary of State of the State of Georgia) was less than 10% of the negro population eighteen years old and over in 1960. It is to be noted in connection with Exhibit B that negro registration figures are not available subsequent to 1958 and the closest population by census is, of course, the 1960 census. Exhibit B lists 31 counties (all of which, with the exception of Sumter, are 2-vote counties), in which the percentage of negro registration to negro eligible population is less than 10%. In two of said counties, there was no negro registration. In each of said counties [fol. 102] a vote cast would have an inordinate political power by virtue of the county unit system, which power is as expressed in the "inequality ratio" of said table; said inequality ratio takes as one the average population per 100 votes for the state (state population divided by 410). Therefore, any "inequality ratio" in excess of one shows an advantage to a vote cast in said county in a statewide election under the county unit system.

Further, your deponent says that she has compiled a list showing the population and colored registered voters (as of 1958) and non-white population 18 years and over in 1960, and the resulting percentage of negroes registered to vote in relation to those eligible by age in the 10 largest counties of Georgia in descending order (Fulton through Hall). Said table is attached hereto, marked Exhibit C, and made a part hereof. This Exhibit C shows that in none of said larger counties were the percentages of negroes registered to those eligible by age less than 19% and in some instances, the percentage of eligibles to registered negro voters was as high as 42%.

Your deponent has examined the case of *Gates v. Long*, 113 S.W. 2d 388, and more particularly at 394, wherein is set up the so-called county unit plan of Tennessee, which your deponent understands was invalidated in that case in 1938. That Act provides in its pertinent parts as follows:

"For the purposes of this Act the county unit basis shall mean that the candidate who receives the highest number of popular votes in any given county shall be [fol. 103] considered to have carried such county and shall be entitled to the full county unit vote of such county. Subject to the limitation of the next paragraph, each county shall have as its county unit vote that number of votes, divided by one hundred, which such county in the last general election cast for the party nominee for governor. In such computation a fraction shall be considered one vote.

"The maximum county unit vote of any county, irrespective of total vote cast, shall be one eighth of one per cent of the population of such county according to the latest officially proclaimed Federal Census as of the date of said primary election. In such computation a fraction shall be considered one vote."

This so-called county unit system was an open-end system, that is, so long as the total votes cast for governor in the previous election within a county increased, the units assigned in the subsequent election increased with this limitation, namely, that no county might have a county unit vote greater than $\frac{1}{8}$ th of 1% of the population of the county. This system was absolutely tied to votes cast in said preceding election, but it limited a county's county unit votes only if the votes cast in said election exceeded $\frac{1}{8}$ th of 1% of the county's population. So long as this did not occur, the Tennessee county unit system was almost completely tied to the popular votes cast in the previous said election.

For illustrative purposes only, your deponent has applied the Tennessee unit system 1960 population figures, [fol. 104] as that system would have been applied in Fulton and Echols Counties in elections following 1958 and had

the Tennessee ratios been geared to primaries. This illustration shows:

County	Pop.	Maximum Unit Votes under Tenn. law	Votes Cast in 1958	United Votes Assigned Without Regard to 1/8 of 1% limitation
Fulton	556,326	695	83,265	833
Echols	1,876	3	588	6

Said table shows that the Tennessee law as applied in the above circumstances would have given Fulton County 695 unit votes and Echols only 3.

Actually, the Tennessee county unit system would have been more discriminatory to Echols than it would have been to Fulton, in that Fulton lost, under the $\frac{1}{8}$ of 1% limitation, far less a percentage of the unit votes to which it was entitled than did Echols which lost 50% of the unit votes to which it would have otherwise been entitled.

Your deponent has examined the mathematical relationships as set forth in the case of *MacDougall v. Green*, 335 U.S. 281, 93 L. Ed. 3. The facts of that case show that Illinois had 102 counties. To get on the ballot in that state, a party had to obtain a petition of at least 25,000 qualified voters with this further proviso, namely, that within the 25,000, there had to be at least 200 petitioners from at least 50 counties. Your deponent has examined the U. S. census figures for Illinois by counties under the 1940 census (the most recent census prior to 1948, the date of the *MacDougall* case). Comparing those figures with the requirements of the law involved in the *MacDougall* case, your deponent shows that approximately 52% of the population [fol. 105] of the population of Illinois, according to said census, resided in Cook County. She notes that 61% of the signatures needed to qualify the party could be obtained from that population and the remaining 39% were required to be garnered from any 49 of the remaining 101 of Illinois counties. Your deponent shows that only 200 signatures were required to be obtained in each of said remaining 49 counties and that no county in the State of Illinois, according to said census, had less than 5289 persons. Moreover, your deponent says there were at least 49 counties in Illinois having more than 25,000 population. Thus, it was possible for said 200 signatures to be obtained in counties

in which said 200 signatures would have been not less than .8 of 1% of population.

Finally, your deponent shows that if, under the 547 unit vote proposal, there should be a proration of unit votes of a county in proportion to the votes a candidate receives in said county, said proration will not reduce the discrimination implicit in the plan to the extent that the 547 unit vote proposal in any event grants to Fulton County but 53% of an equal ballot and to voters in other counties, many times an equal ballot. Nor can any such proration plan avoid the consequence of the system by which a majority of the population of voting age, taking the counties in descending order of population, will have only a 31.1% of the unit votes. Moreover, if the General Assembly should provide for a proration of unit votes of a county amongst the candidates, but limit this to some circumstances and denying this proration in others, this would only serve to increase the distortion already implicit in the 547 unit vote proposal, as outlined above. This distortion would be particularly discriminatory if the unit votes of the larger counties were prorated and the smaller counties were not, or if the unit votes were prorated in case a candidate did not receive a majority of votes of a county, but were not prorated if some candidate did.

For illustration only, let us suppose an election involving two 5-vote counties, X and Y; with a total of 5,000 votes cast in each county for three candidates, A, B and C. Further suppose that as proposed in the General Assembly Session, there was no proration of the counties' unit votes unless some candidate failed to receive a majority of the popular vote within the county. Thus, it appears from the table below that the combined total vote of candidate A in counties X and Y exactly equalled, under the circumstances assumed, the total vote of candidate B in counties X and Y. But because candidate A got a majority of votes in County X, his combined vote (which is precisely equal to the combined vote of candidate B in the two counties) yield candidate A 7.4 units while candidate B gets 2.5 units. The possibilities of such distortions are almost limitless

under a system which prorates unit votes under some circumstances, but not others:

VOTE DISTRIBUTION

<u>Candidate</u>	<u>County X Pop. Vote</u>	<u>County Y Pop. Vote</u>	<u>X and Y Combined Votes</u>
A	2,501	2,398	4899 (49%)
B	2,400	2,499	4899 (49%)
C	99	113	212 (2%)
	<hr/> 5,000	<hr/> 5,000	<hr/> 10,000 (100%)

UNIT DISTRIBUTION

<u>Candidate</u>	<u>Allocation of units without proration</u>	<u>Allocation of units with proration</u>	<u>Total Units of X and Y</u>
A	5	2.4	7.4 74%
B	0	2.5	2.5 25%
C	0	0.1	0.1 1%
	<hr/> 5	<hr/> 5.0	<hr/> 10.0 100%

[fol. 107] This affidavit is given for the purpose of being used as evidence in the above case.

/s/ LESLIE J. GAYLORD

Sworn to and subscribed before me
this 26 day of April, 1962

/s/ FRANCES H. WILLIAMS
Notary Public

Notary Public, Georgia State at Large
My Commission Expires Nov. 24, 1963

[SEAL]

EXHIBIT "A"

[fol. 108] COMPARISON OF PERCENT OF TOTAL UNIT VOTE
GOING TO COUNTIES CONTAINING 50% OF POPULATION
LISTED IN DESCENDING ORDER IN SIZE.

	<u>Number of counties</u>	<u>Population</u>	<u>County Unit Votes</u>	<u>% of Total Population</u>	<u>% of Total Unit Votes</u>
1890	40	933,038	172	50.8%	47.0%
1910	40	1,318,345	172	50.5	44.8
1960	15	1,979,054	76	50.2	18.5
1960— "547 Unit Plan"	15	1,979,054	176	50.2	32.2

COUNTIES IN WHICH NEGRO REGISTRATION (1958) WAS
LESS THAN 10% OF NEGRO POPULATION 18 YEARS OLD
AND OVER (1960).

<u>County</u>	<u>1960 non- white pop. 18 years old & over</u>	<u>1958 Negro registra- tion</u>	<u>% Registra- tion to pop- ulation</u>	<u>"Inequal- ity ra- tion</u>
Warren	2224	195	9%	2.61
Talbot	2507	219	9	2.70
Mitchell	4971	375	8	.98
Worth	3776	296	8	1.15
Telfair	2087	169	8	1.64
Sumter	6710	483	7	1.56
Harris	3102	215	7	1.72
Toombs	2444	170	7	1.14
Burke	6600	427	6	.93
Jefferson	4780	264	6	1.10
Early	3277	205	6	1.46
Madison	989	55	6	1.71
Jeff Davis	909	56	6	2.16
Calhoun	2393	132	6	2.62
Quitman	707	43	6	7.91
Echols	246	15	6	10.25
Charlton	810	40	5	3.62
Glascock	351	19	5	7.20
Macon	4077	178	4	1.46
Bacon	536	22	4	2.30
Stewart	2681	107	4	2.61
Bleckley	1380	45	3	1.99
Treutlen	968	31	3	3.27
Marion	1609	52	3	3.51
Fayette	1190	25	2	2.35
Seminole	1255	29	2	2.83
Lee	1795	29	2	3.10
Miller	946	6	0	2.78
Lincoln	1336	3	0	3.26
Baker	1285	0	0	4.23
Webster	975	0	0	5.92

[fol. 109]

PERCENTAGE OF NEGRO REGISTRATION (1958) COMPARED WITH
NON-WHITE POPULATION 18 YEARS OLD AND OVER (1960): TEN
LARGEST COUNTIES.

[fol. 110]

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<u>County</u>	<u>1960 non- white pop. 18 years old & over</u>	<u>1958 Negro Registra- tion</u>	<u>% Registra- tion to pop- ulation</u>	<u>"Inequal- ity ra- tio"</u>
Fulton	117,049	28,414	24%	.10
DeKalb	12,407	2,153	17	.23
Chatham	37,563	9,250	25	.31
Muscogee	22,549	3,729	17	.36
Bibb	26,812	4,913	18	.41
Richmond	24,785	5,820	23	.43
Cobb	4,568	1,908	42	.51
Daugherty	14,163	2,628	19	.76
Floyd	5,949	1,523	26	.56
Hall	2,789	1,209	43	.77

[fol. 111] CERTIFICATE OF SERVICE (omitted in printing).

[fol. 112]

PLAINTIFFS' EXHIBIT 9

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

CIVIL ACTION
No. 7872

JAMES O'HEAR SANDERS

vs.

JAMES H. GRAY ET AL

GEORGIA
FULTON COUNTY

PERSONALLY APPEARED before me the undersigned officer duly authorized by law to administer oaths, JAMES C. BONNER, who, after being duly sworn, deposes and says on oath as follows:

That he is the Professor of History and Chairman of the Department of History and Chairman of Faculty Research at the Woman's College of Georgia, Milledgeville, Georgia, and has been so since 1944 and that his qualifications and educational and professional history are as set forth in Exhibit A, consisting of two pages, attached hereto and made a part of this affidavit.

Your deponent further says that he has specialized in research and study of Georgia history, including political history, for more than twenty years. Your deponent further says in the preparation of this affidavit, he has consulted the conventional and recognized sources for the study and presentation of State history. Your deponent

[fol. 113] says that the following material represents an accumulation of his studies which can be appropriately denominated "Legislative Apportionment and County Unit Voting in Georgia Since 1777" and that the facts set forth in said study included in this affidavit are to the best of his knowledge true and correct and that the opinions expressed therein are those that are truly held by him and are, in his professional opinion, true and correct.

Democracy is a term which is heard so often that we seldom undertake its definition. Leading authorities do not agree upon its exact meaning, yet there is one common denominator in most of these definitions. James Bryce defined it as "a form of government in which the ruling power of the state is legally vested . . . in the members of the community as a whole." While Walter Lippmann says that we must abandon the notion that the people govern, he does include in his definition that the people, by occasionally mobilizing as a majority, do oppose or support those who do rule. Robert M. MacIver says that it is primarily a way of determining who shall govern and to what ends. Others have added the idea that democracy is a way of social life. While the term may have no precise definition and may have various meanings among various peoples at different stages of their development, it is generally accepted by historians to mean a form of government in which the ultimate sovereign power is held by the people and exercised through a system in which the representatives are chosen by a large electorate.¹

In the course of our history, from the Revolution to the present, four cycles of democracy are apparent.² The first [fol. 114] of these was the era of the Revolution itself, the writing of the Declaration of Independence, and the formation of the first state constitutions at a time when the people had first assumed authority. Georgia's original constitution, that of 1777, was framed by a group elected to serve in the legislature and, lacking precedent in procedure, they did not submit the document to the voters for ratification. While its form and philosophy were some-

what British in tone, reflecting ideas with which the people were already familiar, it did make one violent break with the past. It transferred ultimate sovereignty and power from the Crown and the British Parliament to the legislative branch of the new government. This was a legislature of one house to be chosen by an electorate comprised of all adult males who owned property worth £10 or who had a mechanic trade. Eight counties were established at this time to serve the role of political units. The constitution provided for a modified system of borough and shire representation in use in England. Apportionment of representatives was geared closely to population. Liberty County was accorded fourteen representatives, the intermediate counties had ten each, and Glynn and Camden each were allowed only one. In addition, the ports of Savannah and Sunbury were given special representation of four and two representatives respectively, "to represent their trade." Thus, the non-rural-commercial interests of these communities were recognized. This was perhaps the most democratic legislative apportionment in the state's entire history.

This early Georgia legislature, called the House of Assembly, not only did what legislatures normally do today but it did practically everything which any sovereign government does. In addition, it appointed all judges, and [fol. 115] local officials, named the governor, who was little more than their executive secretary, and finally it chose the members of the Executive Council. These members of the Executive Council represented the various counties and those counties which were entitled to 10 or more representatives had 2 councilors. It is interesting to note that the voting procedure of the Council was to ballot by counties rather than by individual members. This is the earliest suggestion of the county unit system of voting which was adopted in primary elections of a later day.

The first phase of democracy came to a close with the formation of the federal constitution of 1787. The conservative elements in the nation had become alarmed by "the democratic excesses" of the states during the depression of 1785-86 when they had passed stay laws, issued

paper money without sound backing and had in other ways shown little respect for property rights. To the upper classes, democracy came to stand for radicalism and mob rule. John Adams riding home from the Continental Congress, was accosted by a countryman who expressed gratitude for Adams' role in extinguishing British courts and justice in the colonies. "I rode along without any answer to this wretch," Adams tells us. "If the power of the country should get into such hands, and there is a great danger that it will, to what purpose have we sacrificed our time? . . ." Later he thought that democracy was committing suicide. "Remember, democracy never lasts long," he stated to an anxious colleague. "It soon wastes, exhausts and murders itself."

The new federal constitution departed drastically from the trend of the state constitutions in setting up a strong executive and in greatly curbing popular control. No single officer in the federal government other than representatives in the lower house of Congress was elected by popular [fol. 116] vote. The president, who was the appointing official, was elected by an indirect system of "state unit" votes which were cast by the electoral college. A state's electors equalled the total number of its senators and representatives in Congress and, while eschewing the idea of a popular vote, the constitution provided that presidential electors be apportioned roughly on the basis of population. States with less than four or five representatives enjoy some advantage over larger states: .

Taking somewhat this pattern of the national constitution as a guide, Georgia in 1789 designed a new organic law which increased the powers of the executive, set up a legislature of two houses with each county comprising a senatorial district entitled to one senator, and a lower house with a representation based on population. Chatham and Wilkes had five representatives each; Burke, Richmond and Liberty, four each; and the remaining counties two each. The House of Representatives nominated the governor and other officials, but the Senate actually elected them from a list of names for each office submitted by the House. Since each county had one senator regardless of

its size; this method of election was another early approximation of the county unit system of holding primary elections similar to that provided by the Neill Act of 1917.

Changes in this constitution occurred in 1795 and again in 1798 when the entire document was almost completely rewritten. The first census (1790) revealed a completely new population pattern. The six up-country counties (Burke, Richmond, Wilkes, Greene, Franklin and Washington) now contained more than 69 per cent of the state's total population. Reapportionment to equalize the political [fol. 117] advantage of up-country counties was the major problem of constitution-makers in this period. The 1795 convention spent most of its time on this problem. The up-country successfully exerted a strong influence to have apportionment in the lower house based more nearly on population. There were now 20 counties. The two largest received four representatives each, seven received three each, and the remaining eleven counties two each.

The up-country won additional victories during the 1790's in having the capital removed to Louisville (and later to Milledgeville) and in changing the method of electing the governor to one which provided for a joint ballot of both houses—a method which gave the up-country a slight edge of votes over the older counties on the coast. In 1798 counties having a population of more than 12,000 were each given four representatives in the lower house, which was the limit accorded any county. A total of four population classifications was established for determining representation. The old rule of allowing each county one senator was retained. The interests of the conservative planter class in both sections were clearly felt and are indicated by the adoption at this time of the federal ratio in determining the population value of a Negro slave as three-fifths of a free person in determining representation. Thus, McIntosh County on the coast, with two and a half times as many slaves as white persons received a political importance out of proportion to its white voters. On the other hand, the three-fifths ratio added little to the political weight of Jackson County where there were four and a half times as many whites as Negroes.

[fol. 118] Despite the three-fifths ratio which favored large slave-holding areas, the Constitution of 1798 embraced a high degree of democracy. The spread of cotton-growing throughout the up-country and the increase of slavery in a wide belt westward from Augusta, following the retreating perimeter of the frontier, soon brought the center of political power to Middle Georgia where it remained throughout the ante-bellum period.

The second cycle of democracy, from the close of the eighteenth century to 1860, was one in which the state governments, highly amendable to the will of the people, played a significant role, and the federal government took only a passive interest. This phase might be said to have begun with Thomas Jefferson's inauguration in 1801 and to have reached its peak in the period of Jacksonian democracy in the 1830's. This "age of the common man," was manifested in Georgia as early as 1824 when this state became the first of the Southern states to adopt an amendment making the governor elective by statewide popular vote.⁹ Previously, the governor's power was greatly increased, and property qualifications for voters were completely eliminated. There was now a security clause for honest debtors, a ban on the further importation of slaves from Africa, and a basic humane principle in the slave code which gave to the Negro the same protection of life and limb as that accorded to white citizens.⁹

After the Sixth Census, in 1831, a new legislative apportionment took cognizance of population changes and created four classifications of counties for legislative representation in the lower house. The three most populous counties [fol. 119] —Hall, Monroe, and Gwinnett—each were accorded four members. Twenty-four counties in the next category were given three members. Thirty-one counties in the third classification each had two members and the remaining 32 counties had one each.¹⁰ This was with little doubt the fairest legislative apportionment which the state was to have within the next 130 years.

The rapid growth of the state and the creation of many new counties in the area recently ceded by the Cherokees created a large and unwieldy legislature. As a result, in

1843, an amendment was passed to reduce the size of the General Assembly. The number of senators was cut almost in half by creating for the first time 47 senatorial districts each comprised of two contiguous counties (except the First District which comprised only of Chatham County). Each district was to have one senator. In the House the 37 largest counties each were given two members and the remaining 56 counties one each. The total number of representatives was fixed at 130.¹¹ To provide for new counties another amendment, effective in 1851, dropped the fixed number of representatives. In the following year the senatorial districts were abolished and the old system of allowing one senator for each county was restored.¹² Thus, geography as a basis for representation was emphasized rather than population, and the problem of apportionment was overshadowed by the need to restrict the size of the General Assembly.

The problem of restricting the size of the General Assembly continued to plague law-makers. From 1850 to 1858, a total of 38 new counties were created (including Fulton, which was cut off from DeKalb in 1853). The Constitution of 1861 accordingly restored the senatorial districts which now numbered forty-four. Each senatorial [fol. 120] district was now comprised of three contiguous counties instead of two, which reduced the size of the senate by two-thirds. Apportionment in the lower house remained as in 1843, with only two population categories recognized.¹³ This was the system of apportionment that was not changed until the period of military reconstruction in 1868.

At this point, about 1860, began the third cycle of democracy. It is characterized by the federal government for the first time assuming a dominant role which it has never since yielded.¹⁴ However, it should be noted that it was Congress which exercised the controlling influence. The Civil War brought an end to federalism and ushered in the present stage of nationalism. Most of the Southern states, including Georgia, have opposed the democratic tendencies of the nationalistic age on old theories which are grounded in the pre-Civil War ideas of federalism.

Georgia's constitutional convention of 1865 did what it was necessary to do to bring Georgia in line with changed political, social and economic conditions following the war, including the abolition of slavery, but it did nothing to change the unrealistic two-class system of legislative apportionment which it had used since 1843.¹⁴

It was the advent of military reconstruction in March, 1867, which brought congressional influence to play upon the constitution of Georgia. However subversive of the normal democratic process which these acts of reconstruction carried out by the military authorities may have been, a fact often overlooked is that they provided for a higher degree of democracy than had existed previous to about 1830, or perhaps even much earlier. The "democratic excesses" of this period involved Negro suffrage under carpet-[fol. 121] bag tutelage. It was this fact which disrupted violently the normal and orderly process of democratic evolution in the South. This also provided the springboard for a conservative reaction after the restoration of Home Rule, the results of which were to remain in evidence for almost a full century.

General John Pope who commanded the Third Military District of which Georgia was a part, set up in each of the 44 senatorial districts a board of registrars comprised of one Negro and two white men. Late in the summer of 1867 these boards proceeded to register a new set of voters—which included the negroes—in compliance with an act of Congress passed on July 19. To promote a large registration the boards were allowed twenty-six cents for each name recorded. Negroes were rounded up and registered, some under different names and many were enrolled more than once. In August, some South Carolina blacks were registered. Conversely, some seven to ten thousand white men were refused registration under the existing rules which barred the old political leadership. In Baldwin County the colored registration was 6,635, while only 2,608 whites were enrolled. In the state at large, however, white registration barely exceeded that of the negroes.¹⁵

Pope issued General Order No. 69 which declared each of the 44 senatorial districts a voting unit, rather than the

county as had always been the custom. Of great significance is the fact that the order confirmed eight classifications of these election units. To the First District (Chatham, Bryan and Effingham counties) was apportioned eight delegates. To the eighteenth (Richmond, Glascock and Jefferson) he permitted seven delegates, and to the twentieth (Baldwin, Hancock and Wilkinson), six. Thirteen other districts were allotted five each; five others were [fol. 122] permitted four each; ten were given three each; seven were given two each; and the remaining four each were allowed only one delegate.¹⁶

Since this apportionment was designed roughly on a population basis, it appears at first glance to have been the most equitable representative apportionment ever used in Georgia for such purposes. However, there had been marked population shifts since the last census, in 1860, and this apportionment seems to have been based either upon total registration figures, or upon estimated population changes rather than upon the official population figures for 1860. On the basis of these figures, the First District with eight delegates had a population of 2,500 less than the Twenty-second District (Bibb, Monroe and Pike) which was accorded only seven. The Fourth District (Glynn, Camden and Charlton) had a population of 11,089 and was allotted one delegate, while the Fortieth District (Union, Towns, and Rabun), with a population of 10,143 was allotted two. The Twentieth District (Baldwin, Hancock and Wilkinson) was given six delegates which represented a population of 33,820, while the five delegates permitted the Thirty-Sixth District (Meriwether, Coweta and Campbell) represented an 1860 population of 38,334.

The foregoing arrangement provoked a Milledgeville editor to charge that this procedure was rigged in order to make the vote of white men "63 per cent less valuable than the negro vote."¹⁷ While this author has found no justification for such a claim, there is ample evidence of considerable arbitrariness in subsequent procedures leading to the final adoption of the Constitution of 1868.

For one thing, the voting on the convention itself and the election of delegates was to be held for three days;

[fol. 123] from October 29th to the 31st, inclusive. A convenient order issued at a later date allowed men to vote in counties other than where they were registered, thus increasing the possibilities of plural voting by the floating Negro population. Seeing the inevitability of the results or else hoping to thwart the plans of the reconstructionists by casting less than a majority of the total number of registered voters, many whites defaulted on their franchise. Only seven white citizens voted in Baldwin County, three in McIntosh, and one in Jefferson. However, such defaulting of the franchise in the end proved to be of no purpose.¹⁸

The general features of this convention and the constitution which was approved in 1868 are better remembered for certain stigmas attached to them than for their democratic achievements. Actually the constitution was a credit to the ideal of a growing and expanding democracy. Such anachronisms as lotteries and imprisonment for debt were abolished. Married women were given complete control of their own property. Negroes were given the ballot and no white men were disfranchised. Legislative apportionment left the 44 senatorial districts unchanged, while the apportionment of representatives in the lower house was based on a new "three class system" which remains today except for slight modifications made in 1877 and in 1920. This apportionment gave to each of the six largest counties three representatives. The next 31 largest counties each were allotted two, and the remaining 95 were given one each. It provided that this apportionment might be altered after each census period, but the aggregate number of representatives was to remain at 175.¹⁹

[fol. 124] A close analysis of this apportionment indicates that it was a fairer basis than any which had existed since 1843 and perhaps equal to that which had been inaugurated during the first cycle of democracy immediately following the Declaration of Independence. The six largest counties, in descending order, were Chatham, Richmond, Burke, Bibb, Muscogee and Troup. Of this group, only Chatham (population 31,043) had a population in excess of 21,284 (the population of Richmond County, the second largest). The re-

maining four counties in this group had a population between 16,000 and 17,291. The 31 counties in the second classification had a population range from 15,953 to 10,146, and the 95 counties in the third classification ranged in size from 10,125 to 1,316. Fulton County at this time was in the second category with 14,427 people (according to the 1860 census). The least populous county was Colquitt (population 1,316). The most populous county in the third classification was Putnam (population 10,125). Colquitt enjoyed only a 1 to 7.60 ratio in representation over Putnam County (based on the 1860 census). Between the largest county (Chatham) and the smallest county (Colquitt) the ratio was only 1 to 7.86. Numerous inequalities were found among the 95 rural counties, but these were not great and of no unusual significance. There was no significant disparity in voting power at this time between rural and urban communities. The rise of very large urban centers in Georgia awaited the passing of three or four decades.

As already indicated, the great liability of the Constitution of 1868 was not the result of its democratic features as its stigma of having been born of military reconstruction. [fol. 125] Only two or three significant features of this story need to be related here. When the delegates to the Convention of December, 1867, were elected, thirty-one were Negroes and a few were northern-born adventurers.²⁰ Because Milledgeville's hotels and inns refused to accommodate the Negro delegates, General Pope ordered the convention to meet in Atlanta within earshot of his own headquarters and where appropriate accommodations for the Negro delegates could be obtained. When the constitution was completed early in the following year it contained a clause which made Atlanta the new seat of government. Attempts by the people of Milledgeville and their friends throughout southern and middle Georgia to have the Fortieth Congress disallow this provisions were of no avail. Highly significant, however, are the statements of Henry P. Farrow, soon to become the state's attorney general in the Bulloch regime, who went to Washington to argue in favor of the removal clause. He called the friends of Milledgeville "aristocratic and fossiliferous" and "the most ultra and

uncompromising enemies of Reconstruction." "Old fogies must give place to young America," he stated. He claimed that there were 100 colored freeholders in Atlanta to one in Milledgeville, and he described the former city as young, thriving, and beautiful, with its face set toward the future rather than the past.²¹ On the contrary, one of Atlanta's rural critics at this time observed that "Atlanta is scarcely more of a Georgia city than a Tennessee, Ohio, or European city. Its faith is in itself . . . It feeds on Georgia and the rest of mankind . . . Self-seeking is the inspiration for its tremendous energies. She wants the Capitol for the profit that is in it."²²

[fol. 126] Rural Georgians were soon to discover other arguments to support their prejudices against urban ways. These arguments were largely a result of one special feature which the Constitution of 1868 contained—a provision which made corruption tempting to those in control. This was a clause permitting the state and local divisions to aid with public funds, railroads and other similar enterprises. Under Governor Bulloch and the radicals, state bonds were secured illegally such public securities were marketed without rendering an account. The state-owned W & A Railroad was plundered, and governmental expenses soared skyward. Atlanta business men and Atlanta-based politicians were prominent in these transactions representing an unholy alliance between government officials and a rising new class of business men.²³ It was natural that much of this onus of the Reconstruction period should have clung to a prosperous and rapidly-growing community, particularly in other communities still suffering the aftermath of war's destruction. Atlanta soared from thirteenth in rank in 1860 to first in 1880, by which date it had surpassed Savannah as Georgia's largest city. In the eighty-odd years which have elapsed since, Fulton County has outgrown its closest rival by more than two to one. It stands ahead of the eighth ranking county in the first classification by more than seven to one. Lawmakers from rural counties have not felt a strong compulsion to adjust the political balance in Atlanta's favor. After all, they might reason, the existing apportionment system was one which the reconstructionists had designed in Atlanta.

In 1877, after the departure of federal troops from the South and restoration of Home Rule, there emerged the [fol. 127] fourth constitution since the secession of Georgia from the Union in 1861. Delegates to this convention were apportioned to the 44 senatorial districts which were divided into nine classifications, almost identical to the plan imposed by General Pope a decade earlier. The Thirty-fifth District, comprised of Fulton, Cobb and Clayton counties, was awarded nine delegates; and the First District, in which Chatham County fell, was awarded eight. Among the lowest category was the Fifteenth District which received one delegate.²⁴

The local procedure which was followed in the naming of delegates to this convention is highly significant. This procedure set the pattern for the Democratic primary system, for Negro disfranchisement, and also for the county unit system of determining the results of primary elections which evolved throughout the next three decades. In most of the counties throughout southern and middle Georgia, Senatorial District Democratic Executive Committees were formed by the white electors. These county executive committees generally are comprised of one person from each militia district. The senatorial committees allocated delegates to the Constitutional convention by counties somewhat on a population basis. In the first district, Chatham was allotted six, and Bryan and Effingham one each. In the Twentieth District, Baldwin, Hancock and Washington each were given two. In the Thirteenth District, Sumter, Macon and Schley counties were apportioned three, two and one, respectively.²⁵

The nominating procedure used in Baldwin County was somewhat typical of that followed elsewhere. A mass meeting was called for May 1, more than a month before the date set for the general election on June 12. At this county meeting of white Democrats a total of 449 votes were [fol. 128] cast for five candidates; the two highest being named to represent the county in the forthcoming constitutional convention. Subsequently, on May 23rd, the Twentieth Senatorial District Executive Committee, comprised of one delegate from each militia district in the three

counties, met at Sparta, in Hancock County, and confirmed the nominations made in each of the three counties comprising the district. The committee then issued a statement urging "all Democrats," without any reference to race, to support the ticket at the general election on June 12. All of the nominees were overwhelmingly elected in the general election.²⁶

The convention which assembled in Atlanta on July 11, 1877, was one in which white men of the old conservative leadership dominated. Of the 194 delegates, ten were or had been U. S. congressmen, 17 were judges and one was an ex-governor. Negroes and Republicans were conspicuous by their absence.²⁷ The principal feature of the constitution which they framed was a hodge-podge collection of statutory laws rather than a body of fundamental principles. Under the guidance of Robert Toombs, a spokesman for the conservative agrarian element, the power of taxation was curbed, and extreme limitations were placed upon the public debt. These and other features made it a strictly conservative document; inconsistent with the state's potential for industrial and urban growth. The legislative apportionment system, however, was left almost unchanged from that which was begun under the reconstructionists. The number of first-class counties remained at six, with each entitled to three representatives. The number of second-class counties with two representatives each was reduced from 31 to twenty-six, and there were now 105 counties entitled to only one representative each.²⁸ Geared to the population figures [fol. 129] of the 1870 census, this arrangement, with a total representation in the lower house of 175, was relatively an even-handed apportionment.

It is a well-known fact that Negroes voted in Georgia from 1868 until their temporary disfranchisement in 1908, although their presence at the polls in considerable numbers during this period often was spasmodic. The unofficial white primary of this period had proved effective in reducing the size of their vote only so long as white men had stood firmly within the Democratic party. A split into violent factions occurred in the 1890's with the rise of the

Populist Party under Thomas E. Watson. During this period Democrats as well as Populists sought the Negro vote. In many instances it proved to be the margin between victory and defeat. At times this situation threatened to encourage the revival in Georgia of the Republican party which had become largely dormant after Reconstruction.²⁹

Negro disfranchisement was a feature of Hoke Smith's platform in his gubernatorial contest against Clark Howell in 1906. This was a result of Watson's support of Smith's candidacy. The disfranchisement amendment which was passed in 1908, known as the "grandfather's law," added to existing qualifications for voter registration certain requirements which were difficult for Negroes to meet. At the same time it was possible for most illiterate and propertyless white men to qualify under a clause enabling one to register if he were a veteran or even a lawful descendant of a veteran.³⁰

Even before this amendment was passed, however, the Negro vote had been brought under practical control by the primary system and by dishonest manipulation of registration and voting machinery which developed in an extra-legal fashion in the three decades following 1877. By 1904 Tom Watson was able to observe that the Negro had been disfranchised in nearly every state in the South except Georgia and there he had been "white primaried."³¹ On the passage of the 1908 amendment, a constitutional historian wrote that "the political equality of the Negro [in Georgia] is becoming as extinct in law as it has long been in fact, and the undoing of political reconstruction is nearing an end."³²

Between 1877 and 1886 various methods were used to select delegates to state conventions of political parties, including mass meetings in county court houses, county conventions by militia districts, or simply by appointment by county executive committees. Few were chosen by popular vote of the people. In the race for the Democratic nomination of 1866 between John B. Gordon and A. O. Bacon for governor, it is estimated that about half the counties used the primary instead of the less formal methods to

select delegates for the state convention. In this election Henry W. Grady, editor of the *Atlanta Constitution*, managed Gordon's campaign. He correctly surmised that he could offset the advantage which Bacon held in the party organization by appealing directly to the people to rebel against the political machine of the party and to elect their own delegates to the state convention. This came to be called the direct primary.³³

In the following year the primary was given official recognition by a legislative statute which prohibited liquor at polling places during an election. In subsequent years other statutory regulations were prescribed but they were not always made mandatory. In 1908 a requirement was [fol. 131] made that primaries for the nomination of state officers be held on the same date in all counties. Yet the primary was still governed largely by custom and party rules. In the meantime, in 1898, the Democratic party required for the first time that primaries be used in selecting delegates to the state convention. Delegates to the state convention came to be chosen from among the friends of the gubernatorial candidate receiving the largest popular vote in the county.³⁴

The county unit rule was used from the beginning except in the primary of 1908 when Governor Hoke Smith, a candidate for a second term, favored nomination by a state-wide popular vote. Clark Howell, Grady's successor as editor of the *Atlanta Constitution* and a political enemy of Smith, previously had stated that "If this rule is ever once established in Georgia, it means that every country county in this state becomes a way station on the political road." Rural voters caught his message and they became excited over the issue. This decision to revert to the popular vote proved injudicious for Smith, for Joseph M. Brown was victorious by a margin of more than 10,000 votes.³⁵

Reverting to the county unit system after the 1908 campaign, this system has since remained intact but largely under party rules until 1917. At that time it was officially established by the General Assembly as part of the state's election laws under the Neill Primary Act. This act stipu-

lates that the party nomination of U. S. Senators, governor, statehouse officers and justices of the Supreme Court and the Court of Appeals be by primaries according to the unit plan. Plurality in the county would give the candidate all of the county's unit votes. The governor and the senator [fol. 132] were required to receive a majority of all the county unit votes for nomination. Each county was given a unit vote equal to twice the number of representatives it had in the lower house of the General Assembly.³⁶ This made it possible to split conveniently the county unit vote in these rare instances where the popular vote might be equally divided.

The Neill Primary Act was first introduced and passed by the General Assembly in 1916. Governor Nat E. Harris vetoed the act ostensibly because he considered a second primary, for which it provided, an unnecessary expense to the candidates. The *Atlanta Constitution*, however, claimed that the governor vetoed the law because its enactment would decrease his chances for renomination.³⁷ The reintroduction of the act in 1917 was propitious because that was an off-year for elections. Of the numerous newspapers throughout the state who opposed the measure, the *Atlanta Journal* was perhaps the most convincing in its arguments. The *Constitution* favored the county unit plan principally because it would "eliminate convention juggling and trading which always results when no candidate for a state office receives a majority in a primary election."³⁸

In a series of editorials the *Journal* called the law "contrary to the basic principles of popular government." It cited the laws potential for "political jugglery in which the will of the people can be thwarted." Under the county unit system it was possible for a handful of voters in one county to nullify the ballots of thousands of voters in other counties. It termed county unit votes "political blocks representing nothing as regards the will of the state as a whole." A recent election was cited in which Appling and Baker Counties, each with two unit votes, cast 1591 and 373 votes [fol. 133] respectively. Yet the latter counted just as much as the former.³⁹

If five hundred men vote in one county for Governor or any other State official, every one of them is entitled to have his ballot credited; and if a thousand men vote in another county, every one of them is entitled to have his vote credited. But this is just what the County Unit System does not do. The County Unit system virtually throws out the ballots of half the voters in the second county; it virtually disfranchises them. It treats them not as citizens . . . but as so many ciphers to the right of a decimal-point . . .

The fact that the county unit system had been adopted from year to year by Democratic Executive Committees did not alter the fact of its inherent injustice, the *Journal* claimed. "Not until it is true to say that two is as much as four, and not until it is honest to give only eight ounces for a pound and only fifty cents for a dollar, can the County Unit system be anything but deception and fraud." 40

The relationship of the county unit system at this time to Negro disfranchisement was seldom openly discussed either by newspaper editors or by legislators. One possible reason why the newspapers which opposed the law did not discuss its effect upon Negro voting was that the injection of this issue at that particular time, when the Negro was not a voter, would have served no good purpose. Instead it would prejudice many white voters in favor of the law. However, certain personal correspondence of this period does suggest that lawmakers were fully aware of the significance which the county unit system held in relation to white political supremacy.

Typical of these comments is one made by L. J. McConnell of Royston, on July 27, 1917. He wrote that probably the worst feature of the system was the practical disfranchisement of all minority voters in each county. Their votes [fol. 134] would not, said he, be permitted "to be joined to and combined with like votes in counties which they carry." He pointed out that half of Elbert County's two representatives (and its four unit votes) resulted from her Negro population. 41

When the county unit system was officially adopted into law, in 1917, the grandfather's amendment of 1908 had been inoperative for more than two years (since January 1, 1915). It was clear to most political-minded men that such a device as the county unit system was needed if the reappearance at some time in the future of large numbers of Negro voters was to be prevented.

Negroes did not vote in Democratic primary elections in Georgia under the Neill Act until 1946, when the first gubernatorial primary was held after the Smith vs. Allwright decision (in 1944) and the Primus King case (1945).

The most important requirements for voter qualification provided in the Constitution of Georgia in 1946 were literacy, good character, and understanding the duties of citizenship. However, there were no detailed instructions for applying these tests. Up to this time few voters had been challenged and no precedent existed for purging registration lists. Under such conditions procedures varied from county to county and registrars enjoyed wide discretion. Sometimes the burden of proof was placed upon those challenged and at others upon the challenger. The failure of Negroes to appear at the hearings when summoned resulted in numerous disqualifications by default. For those who did appear, the constitutional tests were applied in a variety of ways which eliminated many others.⁴²

Because of the operation of the county unit system, these decisions in individual counties were vitally important in [fol.135] the outcome of the 1946 election, which was between Eugene Talmadge and James V. Carmichael. There was a situation not unlike that of the 1880's when each side sought to manipulate the Negro vote in its own favor. Pro-Talmadge registrars (whose candidate stood for white supremacy) purged Negroes in large numbers. Carmichael partisans used their discretion to favor the challenged Negroes.⁴³ The election resulted in Carmichael receiving 7,644 more popular votes than Talmadge, but the latter won the nomination by capturing a great majority of the county unit votes.

One of the more significant aspects of the recent history of the county unit system is an attempt by its partisans,

on two occasions, to extend the use of the system. Both being in the form of constitutional amendments, they were subjected to popular vote and were defeated. The 1949 proposed amendment to extend the county unit system to general elections was defeated by a popular vote of 164,337 to 134,290. The 1951 proposed amendment to require all political parties to use the county unit system in primaries was defeated in the following year by a popular vote of 309,170 to 279,882.⁴⁴ Thus, the only occasions in which the people have had an opportunity to express themselves on this issue, they have indicated a substantial disapproval.

The presentation of the county unit issue by Georgia newspapers from 1945 to 1960 has been the subject of a detailed scholarly study.⁴⁵ This research shows that those papers which emphasized the implications of Negro disfranchisement in this issue were of the classification known as political organs. While such papers as the two Atlanta dailies, the *Macon Telegraph*, and the *Columbus Ledger* [fol. 136] *Enquirer* maintained a dignified approach with only a rare reference to racial implications, *The Statesman* and the *Augusta Courier* followed the opposite approach. "Voting the Negroes, the pink, the cranks, the radicals, the C.I.O. and other such groups in a block," said the *Courier*, "the Atlanta Ring would be able to dominate the state-wide elections without the county unit system." "Justice William O. Douglas was quoted by the same paper as saying, "If the Georgia county unit system is permissible state practice, it will come to replace the white primary as the instrument of Negro disfranchisement."⁴⁶ Only slightly more less violent in its choice of phraseology was *The Statesman* which held that the county unit system was a bulwark against the "bloc vote," "race mixing," and a guarantee of "the Southern way of life."

Illustrative of the fact that the county unit system does commit a gross travesty upon the democratic process and not entirely or completely related to the question of race, is the story of Georgia elections from 1920 to 1960. There has been one instance in Georgia where the candidate won the Democratic Party's nomination by the county unit vote when he did not also win the popular vote. This was the

Talmadge-Carmichael contest of 1946 already described. One instance in which a U. S. senator was elected by less than a majority of the popular vote was in 1938 when Walter F. George, running against three opponents, received 242 unit votes out of a total of 410, yet polled only 141,235 popular votes out of a total of 321,311 cast. In 1946, with six candidates in the race for lieutenant-governor, Melvin Thompson won with 192 unit votes, although he [fol. 137] received less than 30 per cent of the total popular vote.²⁸ In 1934 and again in 1940 Tom Linder won the office of commissioner of agriculture with less than half of the popular vote. In all of these instances, nomination by the Democratic primary was tantamount to election. In only one of the elections cited above, that of 1946, did Negroes vote in appreciable numbers.

While there was in 1920 disparity in representation between rural and urban counties, and hence in their voting power, disparity in some degree had been evident in legislative apportionment since 1843 at which time it was necessary to reduce the size of the General Assembly to reasonable limits. Moreover, significant and far-reaching changes have occurred since 1920 in the state's economic pattern. These changes have wrought violent shifts of population from rural areas to urban centers.

The peak in the rural population of Georgia was reached in 1920, immediately after which it began to decline and has steadily decreased since. The eight least populous counties in 1920 had a total population of 31,445, while in 1960 this figure had declined to 24,320. At the same time the total population of Georgia increased more than one million. During the same forty-year period the eight counties in the first classification increased from slightly over 400,000 inhabitants to 1,626,734. In 1920 each representative from the eight smallest counties represented less than 4,000 people, while that from the eight largest counties represented 16,666 people. The ratio between the smallest group and the largest group was 1 to 4.24. By 1960 this ratio had increased to 1 to 22.29. The ratio in 1920 between Fulton, the largest county, and Echols, the smallest county, was only 1 to 16.33. By 1960 this ratio had increased to

[fol. 138] 1 to 98.84.^o The above ratios, it should be emphasized, are applicable not only to legislative representation, but also to primary elections under the county unit system established by the Neill Act of 1917. Thus, we have a double-edged sword, growing sharper and more subversive of the democratic ideal throughout the changing times.

By 1960 a considerable proportion of Georgia's large urban communities were Negroes. Now freed from the isolation and conservatism of their former rural environment, they had learned to register under existing qualifications, and to vote. Georgia was reported as having the second largest number of registered Negro voters among the eleven Southern states. While Negroes represented 29 per cent of the total voting-age population of the state, they were still only 12 per cent of the total voter registration. However, this 12 per cent was heavily concentrated in the larger urban centers. The highest registrations of Negroes were in Fulton, Bibb, Richmond and Muscogee counties. With the exception of those in Liberty and McIntosh and several other counties, rural Negroes remained substantially unregistered in 1950. These facts had a considerable bearing upon the determination of rural law-makers to main the county unit system. Complicating the problem of adjustment within the democratic framework was the fact that these same law-makers had the power under the state's legislative apportionment system to deny the people an opportunity to exercise their choice on this matter through failure to submit the entire matter to popular vote.

Before the Civil War, Georgians enjoyed a healthy two-party system, when Whigs and Democrats vied on equal terms for the loyalty of voters. In the four presidential [fol. 139] elections between 1840 and 1852, for example, Georgia's majority changed four times and on each occasion her margin of votes was highly significant to the victorious candidate. In 1840, Georgians gave this majority to the Whig candidate, Harrison. In 1844 they voted for the Democrat, James T. Polk. In 1848 they did a backward somersault and voted again for the Whig, Zachary Taylor, whose "northern principles" did not seem greatly to disturb them. In the 1852 election, Georgia's vote went again to the

Democratic column. Significantly, it was during this period that Georgians held high positions in the Federal administration.

The Whig party went into demise after the 1852 election after which it lost its Southern following over delicate sectional issues. The Republican party, formed in 1854 filled the void left by the Whigs but it did not become a party with a national following until after the Civil War. In several Southern states its development was delayed and complicated by reconstruction.

Georgia has been a one-party state since the removal of federal troops in 1871. Few Republicans have held office in the state since this time. None but Democrats have held a state office since the 1890 decade, after which period this party has been completely in control of statewide elections.

In this paper three cycles of American democracy have been delineated. The fourth and current cycle, beginning in the first quarter of the twentieth century, has been one in which the executive and the judicial branches of the federal government have joined the legislative branch as co-leaders in the movement. This new cycle in the development of American democracy involves social, economic and civil, as well as political rights.

[fol. 140]

FOOTNOTES

¹ Hillman M. Bishop and Samuel Hendel (eds.), *Basic Issues of American Democracy: A Book of Readings* (New York, 1948), 14-18.

² See Fletcher M. Green, "Cycles of American Democracy," *Mississippi Valley Historical Review*, XLVIII (June, 1961), 4.

³ See the Constitution of 1877 in Horatio Marbury and William H. Crawford, *Digest of the Laws of Georgia . . . 1755 to . . . 1800* (Savannah, 1802), 6 *et passim*.

⁴ Quoted in Samuel E. Morison and Henry S. Commager, *The Growth of the American Republic* (New York, 1942), 199.

⁵ Morris L. Ernst, *The Ultimate Power* (Garden City, N.Y., 1937), 70.

⁶ See Marbury and Crawford, *op. cit.*, 14.

⁷ *Ibid.*, 16 *et passim*; See also Jean A. Garrett, Amendments and Proposed Amendments to the Constitution of 1798 (M.A. thesis, University of Georgia, 1944), 1 *et passim*. All statistics used in this paper in reference to population are taken from the official abstracts of the Federal Census, published by the U. S. government in the years immediately following each census.

⁸ See Arthur Foster, *A Digest of the Laws of the State of Georgia* (Philadelphia, 1831), 368; *Acts of the General Assembly . . . 1824* (Milledgeville, 1825), 41.

⁹ See for example the slave code of this period in Augustin S. Clayton, *A Compilation of the Laws of the State of Georgia . . . 1800 to . . . 1810* (Augusta, 1812), 39, 289.

¹⁰ Arthur Foster, *A Digest of the Laws of the State of Georgia*, 102.

¹¹ *Acts of the General Assembly . . . 1843* (Milledgeville, 1843), 17, 18.

¹² *Acts of the General Assembly . . . 1851-1852* (Macon, 1852), 48, 49.

¹³ See the Constitution of 1861 in Walter McElreath, *A Treatise on the Constitution of Georgia* (Atlanta, 1912).

¹⁴ *Ibid.*

¹⁵ The most scholarly and authoritative work on Reconstruction in Georgia is C. Mildred Thompson, *Reconstruction in Georgia . . . 1865-1872* (New York, 1915). See pages 285-287.

¹⁶ This order and all others involving such matters was published in various newspapers throughout the state during this period. See for example, *The Union and Recorder* (Milledgeville), March 27, 1877.

[fol. 141] ¹⁷ *Federal Union* (Milledgeville), Nov. 12, 1867.

¹⁸ Isaac W. Avery, *The History of the State of Georgia, 1850-1881* (New York, 1881), 373; C. Mildred Thompson, *op. cit.* 188.

¹⁹ Walter McElreath, *op. cit.*

²⁰ *Federal Union*, Nov. 19, 1867.

²¹ See "Memorial to Fortieth Congress" in Records of the Commissioners of Milledgeville, 1855-1876 (July, 1868), 336, *passim*. For Farrow's reply see *ibid.*, 340 *passim*.

²² *Union and Recorder*, May 29, 1877.

²³ The best description of the state's economic history during this period is found in C. Mildred Thompson, *op. cit.*, 226-254.

²⁴ *Journal of the Constitutional Convention of the People of Georgia . . . 1877* (Atlanta, 1877), 641-651.

²⁵ *Union and Recorder*, May 29, 1877, April 3, 1877.

²⁶ *Journal of the Constitutional Convention of the People of Georgia* . . . 1877, 641, *passim*; *Union and Recorder*, May 1, 1877, May 29, 1877, June 12, 1877.

²⁷ Avery, *op. cit.* 529.

²⁸ *Ibid.*, 529; See also *Journal of the Constitutional Convention of the People of Georgia*, 1, *passim*; Albert B. Saye, *A Constitutional History of Georgia, 1732-1945* (Athens, 1948), 279-309.

²⁹ See C. Vann Woodward, *Tom Watson, Agrarian Rebel* (New York, 1938); Mrs. William H. Felton, *My Memoirs of Georgia Politics* (Atlanta, 1911), 654-678.

³⁰ Dewey W. Grantham, Jr., *Hoke Smith and the Politics of the New South* (Baton Rouge, 1958), 143.

³¹ *Atlanta News*, Sept. 2, 1904. Quoted in Woodward, *op. cit.*, 370-371.

³² William A. Dunning, "The Undoing of Reconstruction" in *Essays on the Civil War and Reconstruction and Related Topics* (New York, 1931), 383.

³³ Albert B. Saye, *op. cit.*, 183; Lynwood B. Holland, *The Direct Primary in Georgia* (Urbana, 1949), 26-27.

³⁴ Albert B. Saye, *op. cit.*, 183, *passim*.

³⁵ *Ibid.*; Grantham, *op. cit.*, 191.

³⁶ *Georgia Laws*, 1917, 183 ff.

[fol. 142] ³⁷ *House Journal*, 1916, 1291-1293; L. L. Knight, *Georgia and Georgians*, II, 1205.

³⁸ *Atlanta Constitution*, July 24, 1917.

³⁹ *Atlanta Journal*, July 25, 1917, July 27, 1917.

⁴⁰ *Ibid.*, July 27, 1917.

⁴¹ Quoted in *Ibid.*, July 27, 1917.

⁴² Joseph L. Bernd and Lynwood Holland, "Recent Restrictions Upon Negro Suffrage: The Case of Georgia," *The Journal of Politics*, XXI (1959), 488-489.

⁴³ *Ibid.*, 508.

⁴⁴ *Georgia Laws*, 1949, 528; 1951, 101.

⁴⁵ Marian Van Landingham, *The Presentation of the County Unit System Issue by Representative Georgia Newspapers from 1945 to 1960* (an unpublished M.A. thesis, Emory University, 1960).

⁴⁶ *Augusta Courier*, May 1, 1950.

⁴⁷ *Ibid.*, May 8, 1950.

⁴⁸ Albert B. Saye, *The Government and History of Georgia* (Athens, 1956), 237, *passim*.

⁴⁹ The rural population of Georgia in 1920 was 2,895,832. By 1930 it had decreased to 2,012,014. *Abstract of the Fourteenth Census*, 1920 (Washington, 1923), 588; *Abstract of the Fifteenth Census*, 1930 (Washington, 1933), 19.

[fol. 143] This affidavit is given for use in the captioned case.

/s/ JAMES C. BONNER

Sworn to and subscribed before me
this 25th day of April, 1962

/s/ ANN McMILLAN
Notary Public

Notary Public, Georgia, State at Large
My Commission Expires Mar. 31, 1965

[SEAL]

[Handwritten notation—I have served a copy of this affidavit on counsel opposite by mail, this 26 April 1962, Morris B. Abram, Counsel for Plaintiff.]



CURRICULUM VITAE OF JAMES C. BONNER

Professor of History, Chairman of the Department
of History and Political Science, and Chairman of Faculty
Research and Graduate Study
The Woman's College of Georgia, Milledgeville

PERSONAL:

Born June 16, 1904, in Heard County, Georgia.
Married Ida Munro, 1936; children: Page Munro
(b. 1937), James C. (b. 1945). Episcopalian,
Rotarian.

EDUCATION:

A. B. J.; University of Georgia, 1926; M. A.
University of Georgia, 1936; Ph. D. (History),
University of North Carolina, 1943. Disser-
tation in Southern history.

POSITIONS HELD:

Principal-coach, Cave Spring (Georgia) High
School, 1926-27; Headmaster, Carrollton A & M
School, 1927-33; Instructor and Assistant Pro-
fessor of Social Sciences, West Georgia College,
1933-41; Adjunct Professor of History, Randolph-

Maton Woman's College, Lynchburg, Va., 1942-44; visiting Professor of History, Emory Uni-
versity, Fall, 1952; Professor of History, chairman of Department, and chairman of Faculty
Research and Graduate Study, The Woman's College of Georgia, 1944---

SCHOLARSHIPS, AWARDS, AND PROFESSIONAL ACTIVITIES:

Rosenwald fellowship, 1939; Research Assistant, Institute for Research in Social Science,
University of North Carolina, 1940-41; West Georgia College Founder's Award, 1945; Presi-
dent, Georgia Council for Social Studies, 1945; Executive Council; Agricultural History
Society, 1948-50; Editorial Board, Journal of Southern History, 1950-54; Visiting Scholar,
Duke University, 1953; Governor of Georgia Province, Pi Gamma Mu, 1958---; President,
Georgia Society for Historical Research, 1959-60. Advisory Board, National Civil War
Centennial Commission, 1960---; President, Old Capital Historical Society, 1958-60.
Southern Fellowship award, summer, 1958. Research Grant, American Association for State
and Local History, 1961. [fol 144]

LISTINGS:

Directory of American Scholars, 3rd Edition, 1957
Marquis Who's Who in the South and Southwest, 1962

PUBLICATIONS:

a) Books.

1. Studies in Georgia History and Government (Athens, 1940)
2. "William McIntosh" in Georgians in Profile, edited by Horace Montgomery
(Athens, 1958).
3. The Georgia Story (Oklahoma City, 1958, 1961 (Ga. School Adoption List).
4. A Short History of Heard County 1958, 1962.
5. A History of Georgia Agriculture to 1860 (in process of publication)
6. The Journal of Anna Maria Green, 1861-1867 (in press)

b) Articles.

1. "Genesis of Agricultural Reform in the Cotton Belt"
Journal of Southern History, IX:475-500 (November, 1943).

2. "Charles Calcock Jones: Macaulay of the South," Georgia Historical Quarterly, XXVII:324-328 (December, 1943).
 3. "Portrait of a Late Ante-Bellum Community," American Historical Review, XLIX:663-680 (July, 1944).
 4. "The Plantation Overseer and Southern Nationalism as Revealed in the Career of Garland D. Harmon," Agricultural History, XIX:1-11 (January, 1945).
 5. "Plantation Architecture of the Lower South on the Eve of the Civil War," Journal of Southern History, XI:358-388 (August, 1945).
 6. "The Angora Goat: A Footnote in Southern Agricultural History," Agricultural History, XXI:42-46 (January, 1947).
 7. "War Crimes Trials, 1865-1867," Social Science, XXII:128-133 (April, 1947).
 3. "Tobacco Industry in Ante-Bellum Georgia," Georgia Historical Quarterly, XXXI:241-248 (December, 1947).
 9. "Advancing Trends in Southern Agriculture, 1840-1860," Agricultural History, XXII:248-259 (October, 1948).
 10. "Sixteenth Annual Meeting of the Southern Historical Association," Journal of Southern History, XVII:48-58 (February, 1951).
 11. "A Georgia County's Historical Assets," Emory University Quarterly, IX:24-30 (March, 1953).
 12. "Historical Basis of Southern Military Tradition," Georgia Review, IX:3-14 (Spring, 1955).
 13. "Plantation Experiences of a New York Woman," North Carolina Historical Review, XXXIII:384-412; 529-546 (July and October, 1956).
 14. "Sherman at Milledgeville in 1864," Journal of Southern History, XXII:273-291 (August, 1956).
 15. "David R. Shelling: A Story of Desertion and Defection in the Civil War," Georgia Review, X:275-282 (Fall, 1956).
 16. "The Georgia Wine Industry on the Eve of the Civil War," Georgia Historical Quarterly, XLI:19-30 (March, 1957).
 17. "Tustunugee Hutkee and Creek Factionalism on the Georgia-Alabama Frontier," The Alabama Review, X:111-126 (April, 1957).
 18. "The Genesis of Georgia's Livestock Industry," Georgia Review, XI:187-195 (Summer, 1957).
 19. "The Writing of History," Georgia Review, XIV, (Fall, 1960).
 20. "Journal of a Mission to Georgia," Georgia Historical Quarterly, XLIV (March, 1960).
 21. "The Free Range Cattle Industry in Early Georgia (in press)
 22. Ten articles for the 1962 edition of Encyclopaedia Britannica, including a 10,000 word article on "Georgia" (in press)
- c) Book reviews in American Historical Review, Journal of Southern History, North Carolina Historical Review, Agricultural History, Georgia Review, Mississippi Valley Historical Review, and Georgia Historical Quarterly.

(REVISED APRIL, 1962)

Prepared by the Department of Public Relations

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[fol. 146]

PLAINTIFFS' EXHIBIT 10

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

CIVIL ACTION NO. 7872

JAMES O'HEAR SANDERS

VS.

JAMES H. GRAY ET AL

GEORGIA

FULTON COUNTY

PERSONALLY APPEARED before me the undersigned officer duly authorized by law to administer oaths, JAMES O'HEAR SANDERS, who, after being duly sworn, deposes and says that he is the plaintiff in the captioned case. That your deponent is a citizen of the United States and the State of Georgia and a resident of the County of Fulton, and has resided in said County since 1920.

Deponent further says that he is a registered voter qualified to vote in primary and general elections in Fulton County, Georgia; that he is a member of the Democratic Party of Georgia; that he intends to vote in the Democratic Primary election to be held in the State of Georgia on September 12, 1962, and further that he intends to support the nominees of such primary election in the general election to be held in Georgia in 1962.

This affidavit is given for use in the captioned case.

/s/ JAMES O'HEAR SANDERS

Sworn to and subscribed before
me this 25 day of April, 1962.

/s/ ANN McMILLAN
Notary Public

Notary Public, Georgia, State at Large.
My Commission Expires Mar. 31, 1965

[SEAL]

[Handwritten notation—I have served a copy of the within
on counsel opposite by mail, this April 26, 1962, Morris B.
Abram, Counsel for plaintiff.]

[fol. 147]

PLAINTIFFS' EXHIBIT 11

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
CIVIL ACTION No. 7872

JAMES O'HEAR SANDERS

VS.

JAMES H. GRAY ET AL

GEORGIA
FULTON COUNTY

PERSONALLY APPEARED before me the undersigned officer
duly authorized by law to administer oaths, WILLIAM B.
HARTSFIELD, who, after being sworn, deposes and says as
follows:

That he is William B. Hartsfield, a citizen of Fulton
County, Georgia. Your deponent served on the Board of
Aldermen of the City of Atlanta six years, 1923 to 1928.
He served as a member of the General Assembly of Georgia.

representing the County of Fulton, for two terms, encompassing the years 1933 to 1936. That he was elected Mayor of the City of Atlanta six times and served in said office a total of approximately twenty-four years. That he retired from the office of Mayor of the City of Atlanta in January, 1962, having not offered for reelection in the primary election for that office in 1961.

Your deponent shows that he has served as a Trustee of the United States Conference of Mayors some six years and as President of the American Municipal Association. Your deponent has been a student of practical and theoretical politics for many years. That he has been intimately connected with the history of Georgia in the last thirty-five years and that he has made a special study of the county unit system as used in the Georgia Democratic primaries.

Your deponent says that the county unit system, by depressing the influence of ballots cast in counties containing larger populations, has depressed the interest of citizens in said counties, particularly Fulton County, as far as participation in state-wide nominations of the Democratic Party. That potential voters, for example in the County of Fulton, knowing that their ballots cast in Fulton County are debased, frequently take the attitude that there is no use in registering and voting in primaries for state-wide offices. That your deponent verily believes that despite the fact that there is keen interest in local elections where the votes of citizens of Fulton County are not debased, that this circumstance of itself does not generate the full variety of interest in political and governmental affairs which would be the case if Fulton voters enjoyed full ballots in state-wide primary elections.

Your deponent further shows that the citizens of Fulton and other counties in which metropolitan centers are located in the State of Georgia have, as a result of their residence, very little chance for nomination in state-wide primaries. That every student of political affairs in Georgia knows that this is a cardinal rule of politics, established in theory and proved in practice.

That no man from Fulton County, Georgia has served as Governor since the election of Hugh M. Dorsey approximately four decades ago; that no resident of Fulton County, Georgia has served as United States Senator in this Twentieth Century and that moreover, no resident of Fulton County, Georgia, has served in the United States Congress for a full term for more than twenty-five years (Con-[fol. 149] gressional nominations in the last sixteen years have been on a county unit basis and during this period two candidates who were residents of Fulton County, Georgia, and on separate occasions, won the popular vote but lost the county unit vote within the Congressional District of which Fulton County is a part).

Your deponent further says that of his own independent knowledge, the statement of the authority V. O. Key in "Southern Politics in State and Nation", Alfred A. Knopf, New York, 1949, p. 122, is correct:

"In normal campaigns, a vote anywhere is a vote gained or lost. It is always to the candidate's advantage to win a vote anywhere; hence the campaign is fought in every quarter with equal vigor. In Georgia every statewide campaign is made up of 159 separate races, one for the unit votes of each county. Practical politicians emphasize that the man who knows what he is doing diagnoses every county individually. He classifies the counties into three groups: those in which he is sure of a plurality; those in which he has no chance of a plurality; those which are doubtful. He forgets about the first two groups except for routine coverage. He concentrates his resources in the third group: expenditures, appearances by the candidate, negotiations, all the tricks of county politicking . . ."

Moreover, it has become politically profitable for candidates for state-wide offices to run races in which direct attacks are made upon the centers having the greatest population and hence potentially the most voters. Many of the most successful state-wide politicians have run campaigns scorn^{ing} the city counties and search for votes in the country which far outweigh city ballots. Your deponent does

not know of any other state where successful candidates denounce the major population centers in political campaigns to the extent that this is done in Georgia. Deponent has heard major and many times successful candidates for statewide offices state that he didn't care to campaign in any area that had street cars.

[fol. 150] Your deponent states that throughout his career as a public official, the City of Atlanta has been held up to scorn and subjected to campaigns of vilification and abuse have been directed against its citizens and usually by the successful candidate, all with the intention of influencing a large number of small counties' unit votes by prejudicial and invidious arguments. Your deponent says that he is quite well acquainted with voting results in the largest metropolitan area in Georgia. Voters in Atlanta and Fulton County divide amongst the various candidates on what voters conceive to be their interests as they interpret the same from the records and the issues presented by the candidates. When one candidate clearly demonstrates that he opposes what any voter regards as a legitimate hope or aspiration, this voter and others similarly situated, of course, tends to vote against said candidate. However, when rival candidates do not flatly offend the sensitivities, and none asserts a position of opposition to full citizenship participation by any group on an invidious basis, the votes divide and fragment amongst the candidates. The election records amply support this assertion. The County Unit System makes it profitable for ambitious candidates to create false and prejudicial issues dividing city from country, race from race, and labor from capital. This naturally create blocs of votes of country people marshalled against their city brethren on no basis of principle or real self interest.

If Georgians could vote on a popular vote basis in statewide elections, I assert that no serious candidate would dare create the divisive, false and prejudicial issues which have divided our state. The vote is a shield against those who would represent them. Today hundreds of thousands [fol. 151] of Georgians have very little such protection.

They are under the County Unit System, paradoxically excoriated by those who would govern them.

This affidavit is given for use in the captioned case.

/s/ Wm. B. HARTSFIELD

Sworn to and subscribed before me
this 25 day of April, 1962.

/s/ ANN McMILLAN
Notary Public

Notary Public, Georgia, State at Large
My Commission Expires Mar. 31, 1965

[SEAL]

[Handwritten notation—This is to certify I have served
a copy of the written affidavit on counsel opposite by mail,
26 April, 1962, Morris B. Abram, Attorney for plaintiff.]

[fol. 152]

PLAINTIFFS' EXHIBIT 12

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION
CIVIL ACTION No. 7872

JAMES O'HEAR SANDERS

vs.

JAMES H. GRAY ET AL

GEORGIA
FULTON COUNTY

PERSONALLY APPEARED before me the undersigned officer
duly authorized by law to administer oaths, LESLIE J. GAY-

LORD, who, after being duly sworn deposes and says as follows:

Deponent's name is Leslie J. Gaylord, a resident of DeKalb County, Georgia, residing at 120 Glendale Avenue, Decatur, Georgia. Deponent has been a resident of the State of Georgia for forty-one years and is presently assistant professor of mathematics at Agnes Scott College, Decatur, Georgia, and has been on the faculty at Agnes Scott College since 1921, teaching there mathematics. Your deponent was educated as follows: Lake Erie College, Painesville, Ohio; University of Chicago, Chicago, Illinois, and University of Rome, Rome, Italy, and holds a BA degree and Master of Science, the latter being in the specialty of mathematics.

Deponent says that the figures from which the mathematical calculations in this affidavit and on the tables appended thereto were calculated, are drawn from one of the following sources: The official United States Census, the official Georgia Statistical Register or (in the case of figures on registered voters) from the materials kept and [fol. 153] maintained in the office of the Secretary of State of the State of Georgia. Furthermore, all mathematical calculations are done by standard techniques.

When hereafter in this affidavit or any supplementary affidavit filed in this case, your deponent refers to the 547 unit proposal, she means thereby to refer to the proposal which was publicly denominated as having been made by Mr. Roy V. Harris of Augusta, Georgia, as apparently approved by the Governor and as passed by the House of Representatives, in slightly amended form, in Extraordinary Session of the current General Assembly and known as H.B. #1.

When your deponent herein refers to current county unit system or the 410 unit vote county unit system, she means thereby to refer to the county unit system as established under the Neill Primary Act, Georgia Laws 1917, pp. 183-189.

Your deponent says that she has previously furnished an affidavit to this Court in the captioned case in which she

had referred to the term "equal proportions". The term "equal proportions" was used in her previous affidavit in the sense that apparently the Governor intended it to be used in his original proposals which he publicly purposed to propose to the General Assembly of Georgia in Extraordinary Session.

Your deponent shows that the 547 unit plan does not propose to assign unit votes on an "equal proportions formula" and that that formula has apparently been abandoned in the framing of the present 547 unit vote proposal. That the present 547 unit vote proposal is an arbitrary proposal in which unit votes are assigned to achieve a pre-designed result. Under the 547 unit vote proposal, a majority of the population (50.4%) of voting age residing in the State of Georgia would have only 31.1% of the total units as- [fol. 154] signed to the State as a whole. This is to be contrasted with the Neill Primary Act under which that same population has 17.6% of the total unit votes of the State.

Beginning with the largest county and taking the counties of Georgia in descending order of population, fourteen counties have said 50.4% of the population of voting age.

Your deponent has calculated the percentage of voting strength represented by population over eighteen year of age in Georgia needed to elect a governor or senator under the Neill Primary Act and under the 547 unit proposal. Attached hereto and made a part hereof, as Exhibits A and B, are tables showing the result of these calculations. In summary, under the Neill Primary Act, in a two-man race, 12% of said population can elect; in a three-man race, 8% can elect; in a four-man race, 6% can elect, and in a five-man race, 4.8% can elect.

Under the 547 proposal, in a two-man race, 15.4% can elect; in a three-man race, 10.2% can elect; in a four-man race, 7.7% can elect and in a five-man race, 6.1% can elect.

Your deponent shows while these may not be probabilities, they are certainly and assuredly mathematical possibilities, and election experience in the state has several times demonstrated that a candidate receiving a distinct

minority of votes has, in fact, won statewide primary elections under the county unit system.

Attached hereto and made a part hereof as Exhibit 1 are calculations made elsewhere, showing the minimum population required to elect a majority of Georgia's House and Senate. While your deponent has not herself calculated these results, they appear to her to be correct. Capsuling [fol 155] these results, they demonstrate: (1) that voters in counties containing 22.2% of Georgia's total 1960 population can elect a majority of the House of Representatives of Georgia; (2) that voters in the 28 smallest senatorial districts containing 22.6% of the 1960 population can elect a majority of the State Senate and (3) that due to the rotation system for nominating senators in the Democratic primary, voters of 28 counties containing 5.5% of the total 1960 population have elected a majority of the present State Senate.

Thus it is that under the 547 unit proposal and under the present apportionment of Georgia's House and Senate and the election laws of this state, distinct and small minorities of voters can control the legislative and executive branches. Moreover, inasmuch as the judiciary, the Public Service Commission and other statehouse officers are selected under the county unit system, and may be under present law elected without obtaining even a majority of the county units, the judiciary and these other statehouse officers may be elected by a lesser number of votes of the state than would be the case of the governor and the U. S. Senator, both of whom, under the present law, are required to obtain a majority of the unit votes cast.

Attached hereto and made a part hereof are tables, marked Exhibits C and D, showing the voting power of Georgia population of voting age (Exhibit C) under the Neill Primary Act and 547 unit vote proposal, and the same using total population figures (Exhibit D). Said Exhibits C and D also show the voting strength of the groupings of counties under the original 545 unit proposal using "equal proportions" and also using the 545 unit proposal with no counties losing votes and the balance of the votes available assigned under "equal proportions." Your deponent shows

[fol. 156] that as a result of the dropping from the proposal the so-called "equal proportions" features, the voting power of a majority of the population has declined.

Your deponent has made a study comparing disparity ratios in the distribution of the votes in the U. S. electoral college and under the Georgia Neill Primary Act and further under the 547 unit proposal. Said study is incorporated in Exhibit E attached hereto and made a part hereof. A summary of said study shows that in the U. S. electoral college, 62% of the states are within 15% of "parity" as defined in said table; only 18.8% of the counties of Georgia are within the 15% range under the Neill Primary Act and only 23.2% of the counties would be within the range under the 547 unit proposal.

Your deponent has made an examination of the comparison of the number of votes cast in primary elections with the number cast in general elections in the State of Georgia in representative non-presidential election years. The result of said study is shown in Exhibit F, attached hereto and made a part hereof. A summary of said exhibit shows that in general, only a fraction of voters participate in said general elections as compared to voters participating in the statewide Democratic primaries.

Your deponent has made an inspection of the number of registered voters in 1960 as compared with the 1960 population over eighteen years of age in the State and has found that fifteen counties have more registered voters than they have population eligible by age to vote. Your deponent, from her general knowledge and experience, shows that it is not normal for 100% of persons of age to vote, to qualify and register. Your deponent further shows that each of the fifteen counties listed in Exhibit G is a two-vote county and has a disproportionate amount of voting power, both under the Neill Primary Act and the 547 unit proposal.

Your deponent shows, as demonstrated in said exhibit, the county of Long has 160% of the population over eighteen [fol. 157] registered to vote; Union County has 142% and the County of Franklin has 147%.

Your deponent shows that she has made an examination of the rural population census in the various counties of Georgia and said study is incorporated in Exhibit H, attached hereto and made a part hereof. Said study in summary shows that Fulton County ranks third in the state in rural population.

This affidavit is given for the purpose of being used as evidence in the above case.

/s/ LESLIE J. GAYLORD

Sworn to and subscribed before me
this 25 day of April, 1962.

/s/ FRANCES H. WILLIAMS
Notary Public

[Handwritten notation—I have served a copy of this affidavit on counsel opposite by mail this 26th April, 1962, Morris B. Abram, counsel for plaintiff.]

[fol. 158]

Minimum of Total 1960 Population of Georgia
Which Can *Nominate* Majority of Members of
State Senate in the DEMOCRATIC PRIMARY

Nomination in the Democratic Primary in Georgia has been nearly always tantamount to election for a long number of years. Under a rotation system, State Senators are nominated in the Democratic Primary in Georgia by the voters of only approximately $\frac{1}{3}$ of the 159 counties. Accordingly, voters in the 28 smallest counties of the approximately $\frac{1}{3}$ of the counties (54) whose "turn" it is to nominate a Senator in the Democratic Primary can usually "elect" a majority of the Georgia Senate every two years.

As shown in the attached table, voters in counties having 5.5% (215,830) of the total 1960 state population actually elected a majority of the present State Senate, since all Democratic nominees were elected (ratified) in the 1960 general election, where voters of all counties could vote.

A more detailed explanation is in order. Of Georgia's 54 State Senatorial districts, 52 have three counties each. Fulton County (Atlanta) is a one-county district. Chatham County (Savannah) and Effingham County constitute a two-county district.

In the 52 three-county districts, the statutes provide that in the Democratic Primary election, the voters of only one of the three counties shall nominate the candidate for Senator every two years. The statutes provide also for rotation among the three counties in a fixed order every two years. In the two-county Chatham-Effingham district, Chatham County (Savannah) is given two "turns" to Effingham's one "turn"—that is, for two successive primaries the voters of Chatham County nominate the Senator and then in every third primary Effingham County nominates him.

The attached table shows the counties which have nominated and will nominate Senators in the Democratic Primary elections of 1960, 1962, and 1964. The counties listed under each of these years are ranked from lowest to highest according to 1960 population. (Use of 1960 population figures makes these tables hypothetical for the 1962 and 1964 primaries. It is probable, however, that the relative figures would be approximately the same if actual population data were known.)

These tables show that:

- (a) In the 1960 Democratic Primary, voters in 28 counties containing 5.5% (215,830) of the total state population (3,943,116) "elected" a majority of the Georgia State Senate.
- (b) In the 1962 Democratic Primary, voters in 28 counties containing 6.2% (245,158) of the 1960 total state population (3,943,116) could "elect" a majority of the Georgia State Senate.
- (c) In the 1964 Democratic Primary, voters in 28 counties containing 5.2% (203,188) of the 1960 total state population (3,943,116) could "elect" a majority of the Georgia State Senate.

Counties With 1960 Population According to Democratic Primary in Which They Nominate State Senator

		1960		1962		1964
1	Echols	1,976	Glascock	2,672	Webster	3,247
2	Culman	2,432	Gibney	3,254	Long	3,371
3	Towns	4,538	Talbot	3,370	Baker	4,543
4	Charlton	5,313	Dawson	3,590	Clay	4,551
5	Crawford	5,316	Wheeler	5,342	Lanier	5,097
6	Brantley	5,891	Trenton	5,874	Heard	5,333
7	Lee	6,264	Lancon	5,926	Marion	5,477
8	Bryan	6,226	Jasper	6,135	Oconee	6,301
9	Montgomery	6,204	Atkinson	6,188	Banks	6,497
10	Evans	6,952	McIntosh	6,364	Clinch	6,548
11	Lumpkin	7,241	Union	6,510	Candler	6,671
12	Calhoun	7,341	Seminole	6,802	Miller	6,908
13	Varren	7,360	Stewart	7,371	White	6,935
14	Oglethorpe	7,976	Racon	8,359	Talbot	7,127
15	Twigge	7,935	Jones	8,468	Pike	7,138
16	Johnson	8,048	Pickens	8,903	Rabun	7,456
17	Dade	8,666	Butts	8,976	Putnam	7,768
18	Jeff Davis	8,914	Lincoln	9,979	Wilcox	7,908
19	Gilmer	8,922	Loosy	11,414	Fayette	8,195
20	Jenkins	9,148	Perrien	12,008	Dalaski	8,204
21	Irwin	9,211	Foran	12,179	Taylor	8,311
22	Bleckley	9,542	Terrell	12,712	Turner	8,311
23	Pierce	9,678	Chattahoochee	13,011	Wilkinson	9,253
24	Morgan	10,200	Early	13,151	Camden	9,971
25	Monroe	10,145	Ben Hill	13,633	Effingham	10,144
26	Randolph	11,078	Peach	13,846	Lamar	10,210
27	Harris	11,167	Barrow	14,485	Murray	10,447
28	Madison	11,116	Marlson	14,543	Rockdale	10,572
		215,910		245,158		203,188
		5.5%		6.2%		5.2%
29	Paulding	13,191	Scriven	14,919	Vilkes	10,461
30	Macon	13,170	Tatnall	15,837	Greene	11,193
31	Columbia	13,423	Lodge	16,483	Telfair	11,715
32	Brooks	14,262	Henry	17,619	Cook	11,822
33	Douglas	16,741	Elbert	17,815	McLuffie	12,627
34	Crisp	17,768	Wayne	17,921	Appling	13,246
35	Stephens	18,391	Grady	18,015	Franklin	13,274
36	Jackson	18,499	Habersham	18,116	Fannin	13,620
37	Walton	20,481	Gordon	19,228	Liberty	14,487
38	Decatur	25,203	Meriwether	19,756	Hart	15,225
39	Bartow	28,267	Chattooga	19,954	Worth	16,682
40	Gowen	28,893	Tift	23,487	Teombs	16,837
41	Laurens	32,313	Upson	23,800	Jefferson	17,468
42	Calquitt	34,048	Bulloch	24,263	Emanuel	17,815
43	Baldwin	34,064	Houston	39,154	Washington	18,901
44	Ware	34,219	Glynn	41,954	Mitchell	19,652
45	Thomas	34,319	Gwinnett	43,541	Burke	20,596
46	Spalding	35,404	Falker	45,264	Newton	20,999
47	Carroll	36,451	Clarke	45,363	Catoosa	21,101
48	Whitfield	42,109	Clayton	46,365	Coffey	21,953
49	Hall	49,739	Troup	47,189	Cherokee	23,001
50	Richmond	135,601	Lowndes	49,270	Sumter	24,652
51	Muscogee	158,623	Dougherty	75,680	Polk	28,015
52	Chatham	148,299	Cobb	114,174	Floyd	69,130
53	DeKalb	246,782	Chatham	188,299	Bibb	141,241
54	Fulton	554,226	Fulton	556,326	Fulton	556,326
		2,068,239		1,805,245		1,270,581

Minimum of Total 1960 Population of Georgia Which
Can Elect Majority of Members of State Senate in
the GENERAL ELECTION

As shown in the attached table, voters in districts containing 22.6% (890,346) of the total 1960 population of Georgia (3,943,116) can hypothetically elect a majority (28) of the total membership of the State Senate (55).

This minimum was arrived at by ranking the 54 senatorial districts from lowest to highest according to 1960 population. Each district elects one Senator. As shown in the attached table, the 28 smallest districts whose voters can elect a majority of the State Senate had a combined 1960 population of 890,346, or 22.6% of the total 1960 state population.

This is the minimum population that can elect a majority of the State Senate in the General Election. As shown in a separate table, actually a much smaller minimum can elect a majority of the State Senate in the Democratic Primary Election, and nomination in this primary election has been virtually tantamount to election in Georgia for a long time.

Under the rotation system used in the Democratic Primary Election, voters in only approximately 1/3 of Georgia's 153 counties choose all 54 nominees for the State Senate every two years. These 54 Democratic nominees, chosen by the voters in only approximately 1/3 of the counties, have been for a long number of years nearly always elected (ratified) in the general election, where voters in all of the counties can vote.

In actual practice, then, voters in the 28 smallest counties of the 54 counties which "vote" to nominate a Senator in the Democratic Primary, have been able to elect a majority of the Georgia Senate.

A majority of the present Georgia Senate was nominated in the Democratic Primary (actually "elected") by the voters in 28 counties which contained 5.5% (215,833) of the total 1960 population of the state. (SEE SEPARATE TABLE: "Minimum of Total 1960 Population of Georgia Which Can Nominate Majority of Members of the State Senate in DEMOCRATIC PRIMARY.")

(EACH DISTRICT HAS ONE SENATOR)

Rank Order by Population	1960 Population	Senatorial District No.	Counties in District
1	13,050	12th	Quitman, Stewart, Webster
2	17,766	32nd	Lumpkin, Dawson, White
3	18,504	40th	Towns, Union, Rabun
4	21,923	19th	Warren, Taliaferro, Greene
5	24,213	28th	Morgan, Jasper, Putnam
6	25,035	9th	Calhoun, Early, Baker
7	25,766	21st	Johnson, Jones, Wilkinson
8	27,077	2nd	Bryan, McIntosh, Liberty
9	27,686	3rd	Brantley, Wayne, Long
10	27,973	23rd	Crawford, Peach, Taylor
11	28,371	11th	Randolph, Terrell, Clay
12	28,463	15th	Montgomery, Wheeler, Toombs
13	29,320	14th	Bleckley, Dooly, Pulaski
14	29,711	32nd	Monroe, Butts, Lamar
15	31,435	41st	Gilmer, Pickens, Fannin
16	31,956	29th	Columbia, Lincoln, McDuffie
17	34,559	5th	Irwin, Ben Hill, Telfair
18	37,887	49th	Evans, Bulloch, Candler
19	37,997	54th	Jeff Davis, Tattnall, Appling
20	38,913	8th	Decatur, Seminole, Miller
21	39,152	53rd	Brooks, Berrien, Cook
22	39,288	37th	Jackson, Farrow, Decon
23	39,990	46th	Pierce, Bacon, Coffee
24	41,078	13th	Macon, Schley, Sumter
25	42,094	25th	Harria, Upson, Talbot
26	42,156	48th	Crisp, Dodge, Wilcox
27	44,310	30th	Madison, Elbert, Hart
28	44,663	17th	Jenkins, Screven, Burke
	890,346 (22.6%)		
29	46,952	5th	Ware, Atkinson, Clinch
30	49,781	31st	Stephens, Habersham, Franklin
31	55,550	38th	Paulding, Haralson, Polk
32	55,787	36th	Coweta, Meriwether, Pike
33	56,000	16th	Laurens, Treutlen, Emanuel
34	56,043	6th	Echols, Lowndes, Lanier
35	57,042	4th	Charlton, Glynn, Camden
36	59,090	35th	Walton, Henry, Newton
37	62,946	20th	Baldwin, Hancock, Washington

Rank	Population	Senatorial District	Counties in District
38	54,250	5th	Agilethorpe, ...
39	55,974	47th	Colquhoun, ...
40	54,406	33rd	Hall, Forsyth, ...
41	71,784	43rd	Whitfield, Gordon, ...
42	71,986	7th	Thomas, Grady, Mitchell
43	75,031	44th	Dade, Walker, ...
44	88,973	37th	Carroll, Troup, ...
45	89,936	26th	Spalding, Clayton, ...
46	98,566	10th	Lee, Dougherty, ...
47	117,331	42nd	Bartow, Chattooga, ...
48	153,916	9th	Douglas, Cobb, ...
49	155,741	12th	Richmond, ...
50	177,117	1st	Amesbury, ...
51	180,338	51st
52	198,443	1st	Chatham, ...
53	210,895	2nd	Dekalb, ...
54	558,526	5th	...

116 TOTAL 1960 STATE POPULATION

April, 1962

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POPULATION OF GEORGIA WHICH CAN ELECT

MAJORITY OF MEMBERS OF HOUSE OF REPRESENTATIVES

In the table below, 22.2% (874,396) of the total 1960 population of Georgia (3,913,115) can hypothetically elect a majority (103) of the total member Georgia House of Representatives (205).

The minimum was arrived at by ranking the 159 counties from lowest to highest according to population-per-representative. As shown below, the 94 counties with the lowest population-per-representative can elect a majority (103) Georgia House. These 94 counties have a total population of 874,396, or

22.2% of the total 1960 state population.

Representative	County	1960 Population Per Representative	1960 Population	Members Representatives (Ga. Laws 1961, Population §. 111)
	Richards	1,876	1,876	1
	Dutton	2,432	2,432	1
	Glascock	2,672	2,672	1
	Webster	3,247	3,247	1
	Schley	3,256	3,256	1
	Taliaferro	3,370	3,370	1
	Dawson	3,590	3,590	1
	Long	3,874	3,874	1
	Towns	4,538	4,538	1
	Baker	4,543	4,543	1
	Clay	4,551	4,551	1
	Lanier	5,097	5,097	1
	Charlton	5,313	5,313	1
	Heard	5,333	5,333	1
	Wheeler	5,342	5,342	1
	Marion	5,477	5,477	1
	Crawford	5,816	5,816	1
	Treutlen	5,874	5,874	1
	Grantley	5,891	5,891	1
	Lincoln	5,906	5,906	1
	Jasper	6,135	6,135	1
	Atkinson	6,188	6,188	1
	Lee	6,204	6,204	1
	Ryan	6,226	6,226	1
	Montgomery	6,284	6,284	1
	Conner	6,304	6,304	1
	McIntosh	6,364	6,364	1

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County	Population		Representative	Population		Representative
	1911	1920		1911	1920	
Banks	6,497	6,477				1
Union	6,510	6,511				1
Clinch	6,545	6,545				1
Candler	6,672	6,672				1
Seminole	6,802	6,802				1
Miller	6,908	6,908				1
White	6,935	6,935				1
Evans	6,952	6,952				1
Talbot	7,127	7,127				1
Pike	7,133	7,133				1
Lumpkin	7,241	7,241				1
Whitman	7,341	7,341				1
Warren	7,360	7,360				1
Stewart	7,371	7,371				1
Adair	7,450	7,450				1
Wilkes	7,798	7,798				1
Wilcox	7,925	7,925				1
Wilkes	7,926	7,926				1
Twiggs	7,935	7,935				1
Johnson	8,048	8,048				1
Jayette	8,159	8,159				1
Pulaski	8,204	8,204				1
Taylor	8,311	8,311				1
Bacon	8,359	8,359				1
Turner	8,439	8,439				1
Jones	8,468	8,468				1
Dade	8,666	8,666				1
Pickens	8,903	8,903				1
Jeff Davis	8,914	8,914				1
Gilmer	8,922	8,922				1
Butts	8,976	8,976				1
Jenkins	9,148	9,148				1
Irwin	9,211	9,211				1
Wilkinson	9,250	9,250				1
Bleckley	9,642	9,642				1
Pierce	9,678	9,678				1
Camden	9,975	9,975				1
Hancock	9,979	9,979				1
Hoffingham	10,144	10,144				1
Lamar	10,240	10,240				1
Morgan	10,280	10,280				1
Montgomery	10,447	10,447				1
Monroe	10,495	10,495				1
Newton	10,500	10,500				1

1960

Population

Per

Representative

1960

Population

Center

Representative

(Cal. Laws 1961,

p. 111)

County	Population Per Representative	1960 Population	Center Representative (Cal. Laws 1961, p. 111)
Hart	15,229	15,229	1
Brooks	15,292	15,292	1
Tattnall	15,837	15,837	1
Laurens	16,157	32,313	2
Dodge	16,483	16,483	1
Worth	16,682	16,682	1
Douglas	16,741	16,741	1
Toombs	16,837	16,837	1
Colquitt	17,024	34,048	2
Baldwin	17,032	34,064	2
Ware	17,110	34,219	2
Thomas	17,160	34,319	2
Jefferson	17,468	17,468	1
Henry	17,619	17,619	1
Spalding	17,702	35,404	2
Crisp	17,768	17,768	1
Emanuel	17,815	17,815	1
Elbert	17,835	17,835	1
Wayne	17,921	17,921	1
Grady	18,015	18,015	1
Habersham	18,116	18,116	1
Carroll	18,226	36,451	2
Stephens	18,391	18,391	1
Jackson	18,499	18,499	1
Washington	18,903	18,903	1
Gordon	19,228	19,228	1
Houston	19,577	39,154	2
Mitchell	19,652	19,652	1
Meriwether	19,756	19,756	1
Chattooga	19,954	19,954	1
Walton	20,481	20,481	1
Burke	20,596	20,596	1
Glynn	20,977	41,954	2
Whitfield	21,055	42,109	2
Gwinnett	21,771	43,541	2
Walker	22,632	45,264	2
Clarke	22,682	45,363	2
Clayton	23,183	46,365	2
Troup	23,595	47,189	2
Lowndes	24,635	49,270	2
Hall	24,870	49,739	2
Dougherty	25,217	75,680	3
Floyd	34,565	69,130	2

Carroll	10,551	20,111	1
Boonville	10,572	40,371	1
Williams	10,961	10,961	1
Coffee	10,977	21,283	1
Randolph	11,078	11,078	1
Harris	11,167	11,167	1
Greene	11,193	11,193	1
Madison	11,246	11,246	1
Dooly	11,474	11,474	1
Cherokee	11,501	23,241	2
Telfair	11,715	11,715	1
Tift	11,744	23,287	2
Cobb	11,822	11,822	1
Union	11,900	23,822	2
Terrell	12,038	12,038	1
Pulaski	12,132	24,263	2
Forayth	12,170	12,170	1
Sumter	12,326	20,552	2
Decatur	12,602	25,223	2
Wilkes	12,627	12,627	1
Terrell	12,742	12,742	1
Charlton	13,011	13,011	1
Wayne	13,101	13,101	1
		74,376	
		(22,211)	

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Early	13,151	13,151	1
Macon	13,170	13,170	1
Appling	13,246	13,246	1
Franklin	13,274	13,274	1
Columbia	13,423	13,423	1
Paulding	13,620	13,620	1
Den Hill	13,633	13,633	1
Peach	13,846	13,846	1
Bolton	14,008	28,016	2
Bartow	14,134	28,267	2
Covington	14,447	28,393	2
Barrow	14,485	14,485	1
Spalding	14,487	14,487	1
Walton	14,543	14,543	1
Greene	14,919	14,919	1

County	1960		Number Representatives (Ga. Laws 1961, p. 111)
	Population	Per Representative	
Cobb	38,053	114,174	3
Dickinson	48,200	135,871	3
Durham	47,083	141,249	3
Henry	52,874	158,623	3
Chatham	62,766	186,294	3
DeKalb	85,594	256,782	3
Fulton	190,442	555,326	3
		<u>3,943,116</u>	<u>205</u>

PERCENT OF VOTING STRENGTH REPRESENTED BY POPULATION OVER 18 YEARS OLD NEEDED TO ELECT GOVERNOR OR SENATOR.

PRESENT COUNTY UNIT SYSTEM

	<u>Population over 18 years old</u>	<u>Unit Votes</u>
8 Largest Counties	1,023,667	48
11 Largest 4-unit counties	320,559	44
38 Largest 2 unit counties	370,159	76
18 Next Largest 2-unit counties	<u>119,147</u>	<u>36</u>
Total	1,833,532	204
19 Smallest 4-unit counties	324,256	76
65 Smallest 2-unit counties	<u>252,184</u>	<u>130</u>
Total	576,440	206
Grand Total	2,409,972	410

Votes needed to get 206 unit votes in:
(plurality in each county)

		<u>% of total pop. over 18 yrs.</u>
2 man race	288,304	12%
3 man race	192,231	8%
4 man race	144,194	6%
5 man race	115,372	4.8%

PERCENT OF VOTING STRENGTH REPRESENTED BY
POPULATION OVER 18 YEARS OLD NEEDED TO
ELECT A GOVERNOR OR SENATOR

PROPOSED 547-UNIT PLAN

	<u>Population over 18 years old</u>	<u>Unit Votes</u>
29 Largest Counties	1,544,028	243
4 - 3-unit counties	47,669	12
9 - 2-unit counties	<u>78,181</u>	<u>18</u>
Total	1,669,878	273
11 - 4-unit counties	147,880	44
18 - 3-unit counties	183,666	54
88 - 2-unit counties	<u>408,548</u>	<u>176</u>
	740,094	274
Grand Total	2,409,972	547

Votes needed to get 274 unit votes in:
(plurality in each county)

		<u>% of total population over 18 years old</u>
2-man race	370,164	15.4%
3-man race	246,815	10.2%
4-man race	185,141	7.7%
5-man race	148,136	6.1%

POPULATION OF VOTING AGE

	1960 Population 18 yrs of age & over		Present Units		547 Unit Votes Governor's Proposal		545 Distributed "Equal Prop."		No County Losing Votes "Equal Prop."	
	Actual	% of Total	Number	% of Total	Number	% of Total	Number	% of Total	Number	% of Total
14 Largest Counties (Fulton thru Clarke)	1,213,809	50.4%	72	17.6%	170	31.1%	217	39.8%	318	44.7%
24 Middle Counties (Walker thru Newton)	454,673	18.8%	96	23.4%	109	19.9%	86	15.8%	126	17.7%
121 Smallest Counties (Burke thru Echoles)	741,490	30.8%	242	59.0%	268	49.0%	242	44.4%	267	37.6%
Total	2,409,972	100.0%	410	100.0%	547	100.0%	545	100.0%	711	100.0%

Source: Population from U. S. Census, Series P.C.U.) 12 B Ga.

Unit Votes: Present from worksheet on Governor's Proposal

Governor's Proposal " " " "

545 Distributed "Equal Prop." calculated by assigning each county a base of 2 unit votes and distributing extra 135 on "equal proportions.

No county losing unit votes: calculated by assigning each county a base of 2 unit votes and adding votes on the equal proportions system until all of present 4-unit counties receive 4 votes by this method.

EXHIBIT C

TOTAL POPULATION

	1960 Population		Present Units		547 Votes Governor's Proposal		545 Distributed "Equal Pro"		No County Losing Votes "Equal Pro"	
	Actual	% of Total	No.	% of Total	No.	% of Total	No.	% of Total	No.	% of Total
15 Largest Counties (Fulton thru Walker)	1,979,054	50.2%	76	18.5%	176 187	32.2% 34.3%	222	40.7%	325	45.7%
23 Middle Counties (Gwinett thru Newton)	701,210	17.8%	92	22.5%	103 446	18.8% 24.3%	81	14.9%	119	16.7%
121 Smallest Counties (Burke through Echoles)	<u>1,262,852</u>	<u>32.0%</u>	<u>242</u>	<u>59.0%</u>	<u>268</u> <u>242</u>	<u>49.0%</u> <u>44.4%</u>	<u>242</u>	<u>44.4%</u>	<u>267</u>	<u>37.6</u>
Total	3,943,116	100.0%	410	100.0%	547 545	100.0	545	100.0%	711	100.0%

EXHIBIT D

**COMPARISON OF DISPARITY RATIO DISTRIBUTION
U. S. ELECTORAL COLLEGE AND GEORGIA
COUNTY UNITS, PRESENT SYSTEM AND 547 PROPOSAL**

"Disparity Ratio" Range	U. S.		G E O R G I A			
	Electoral Votes		Present 2-4-6 System		Proposed 547 votes	
	No. of States	% of Tot. States	No. of Counties	% of Tot. Counties	No. of Counties	% of total counties
0.10 - 0.499	0	0.0%	6	3.8%	0	0.0%
0.50 - 0.749	0	0.0	2	1.2	9	5.7
0.75 - 0.849	0	0.0	5	3.1	5	3.1
0.85 - 0.949	12	24.0	7	4.4	5	3.1
0.95 - 1.049	9	18.0	7	4.4	10	6.3
1.05 - 1.149	10	20.0	16	10.1	22	13.8
1.15 - 1.999	10	20.0	55	34.6	71	44.7
2.00 - 2.999	6	12.0	34	21.4	26	16.4
3.00 - 3.999	2	4.0	16	10.1	4	2.5
4.00 and up	1	2.0	11	6.9	7	4.4
	50	100.0%	159	100.0%	159	100.0%

0.85 - 1.114 (within 15% of "parity")	31	62%	30	18.8%	37	23.2%
---	----	-----	----	-------	----	-------

Extreme Variations:

Lowest "Dis- parity Ratio"	0.86	0.10	0.52
Highest "Dis- parity Ratio"	4.43	10.25	7.69
Ratio highest to lowest	5.15	102.5	14.79

Note: "Disparity Ratio" is percent of variation from average population per electoral vote for U. S. and average population percent vote for Ga. Works out same as "equality ratio".

COMPARISON OF NUMBER OF VOTES CAST IN PRIMARY ELECTION
WITH NUMBER CAST IN GENERAL ELECTION

[fol. 173]

Year	Race	Number of Votes Cast		Gen'l Election Vote of Primary Vote
		Primary	General Election	
1930	U.S. Senator-George, Russell	190,090	47,367	} for Senator 24.9%
	Governor-Carswell, Hardman, Holder Wood	193,025	47,367	
	Governor-Runoff-Hardman Holder	141,065	47,367	} 24.5%
1934	U.S. Senator-Harris, Slaton	208,264	55,607	} for Senator 26.7%
	Governor-Carswell, Rivers Russell, Holder Perry	206,061	55,607	
	Governor-Runoff- Carswell, Russell	146,662	55,607	} 27.0%
1938	Governor-Talmadge, Gillon, Pittman	270,326	53,101	19.6%
1942	U.S. Senator-Camp, George, McRae, Talmadge	321,311	70,339	21.9%
	Governor-Howell, Mangham, Rivers Wood	316,337	70,919	22.4%
1946	U.S. Senator-Russell, Upshaw	287,929	61,762	21.5%
	Governor-Arnall, Talmadge	303,151	62,220	20.5%
1950	U.S. Senator-Rivers, Talmadge; Car- michael; O'Kelley	691,881	145,403	21.0%
1958	Senator-George, Hyle, McLennon	569,894	256,140	44.9%*
	Governor-Avery, Baker, Jenkins, Thompson Talmadge	583,037	Max. voting amend to extend County Unit to gen'l election polled total of 298,627	43.9%
1958	Governor-Vandiver, Abernathy, Bodenhamir	620,409	168,514	27.2%

Source: Georgia Official & Statistical Register
*Large turnout for amendment to extend County Unit to general election

**COUNTIES REPORTING MORE REGISTERED VOTERS IN 1960
THAN THEY HAD POPULATION OVER 18 YRS. OLD**

<u>County</u>	<u>1960 Population Over 18 yrs. old</u>	<u>1960 Registered Voters</u>	<u>Reg. Voters as % of Pop. over 18 years old</u>
Dodge	9,720	12,075	124%
Fannin	8,142	8,452	104%
Franklin	8,387	12,319	147%
Appling	7,263	9,064	125%
Paulding	7,956	8,169	103%
Telfair	7,025	7,576	108%
Green	6,563	7,501	114%
Evans	4,216	4,462	106%
Candler	3,914	4,185	107%
Union	3,958	5,622	142%
Montgomery	3,808	3,908	103%
Bryan	3,400	3,551	104%
Towns	2,943	3,514	119%
Long	2,162	3,470	160%
Dawson	2,149	2,183	102%

Source: Population - U.S. Census PC(1) 12 B Ga.
Registered Voters

[fol. 175]

EXHIBIT H

RURAL POPULATION 1960

COBB	58,821
DEKALB	39,617
FULTON	34,542

Fulton ranks third in rural population. However, its farm population of 2,718 ranks well down in the state. The definition of Farm population was changed in the 1960 census which dropped Fulton's total considerably. According to the 1959 census of agriculture Fulton ranks 19th (1086) in the state in number of farms.

[fol. 176]

PLAINTIFFS' EXHIBIT 13

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION

No. 7872

JAMES O'HEAR SANDERS,

Plaintiff

—VS—

JAMES H. GRAY, ET AL,

Defendants

AFFIDAVIT

GEORGIA
FULTON COUNTY

Personally appeared before me, the undersigned officer duly authorized to administer oaths, RICHARD N. HUBERT, who after being sworn says:

Deponent's name is Richard N. Hubert, a resident of DeKalb County, Georgia, residing at 1766 North Decatur Road, N. E., Atlanta, Georgia.

Your deponent is presently employed as the Research Director of the Georgia Tax Research Foundation, Inc., a non-profit corporation organized and existing under the laws of the State of Georgia.

Attached to this affidavit and made a part hereof is a schedule entitled "TAX REVENUE RECEIVED FROM, AND PAYMENTS MADE TO, EACH OF GEORGIA'S 159 COUNTIES, BY STATE TREASURY, Fiscal Year 1959-1960". Said attached schedule was prepared by the Georgia Tax Research Foundation, Inc. The data contained in said attached schedule is based upon figures contained in "Statistical Report of the Department of Revenue of the State of Georgia 1959-60" and "Report of State Auditor of Georgia, year ending June 30, 1960".

[fol. 177] The column headed "Payments To" appearing on said attached schedule reflect all payments by the State Treasury to each of the 159 counties for Confederate Pensions, Education, State Aid to Counties for Roads, Public Health and Public Welfare. The column headed "Excess" lists the amounts that those counties paid into the State Treasury above the amounts received back from it for the period indicated. There are 38 of these "Creditor" counties. The column headed "Deficiency" lists the amount of payments such counties received back from the State in excess of the amount they paid to the State Treasury for the period indicated. There are 121 of these "Debtor" counties.

This affidavit is given for the purpose of being used as evidence in the above styled case.

/s/ RICHARD N. HUBERT
RICHARD N. HUBERT

Sworn to and subscribed before me,
this 26 day of April, 1962.

/s/ MAURICE N. MALOOF
NOTARY PUBLIC.

[Seal]

GEORGIA'S 159 COUNTIES, BY STATE TREASURY,
Fiscal Year 1959 - 1960

Excess or Deficiency of
Receipts compared to Pay

County	Received from	Payments To	Excess	Deficiency
1. Appling	\$ 875,048	\$1,316,666	--	\$ 441,618
2. Atkinson	364,641	830,778	--	466,137
3. Bacon	730,799	909,463	--	178,664
4. Baker	200,892	593,863	--	392,971
5. Baldwin	1,609,906	1,188,259	421,647	--
6. Banks	197,341	657,879	--	460,538
7. Barrow	1,110,428	1,476,093	--	365,665
8. Bartow	2,302,049	1,810,479	491,570	--
9. Ben Hill	1,083,414	1,116,606	--	33,192
10. Berrien	996,100	964,023	32,077	--
11. Bibb	13,129,602	6,763,859	6,365,743	--
12. Blount	647,522	777,363	--	129,841
13. Brantley	479,374	624,755	--	145,381
14. Brooks	923,010	1,419,301	--	496,291
15. Bryan	511,133	635,990	--	124,857
16. Bulloch	1,877,293	2,003,963	--	126,670
17. Burke	1,133,829	1,807,262	--	673,433
18. Butts	593,019	700,904	--	107,885
19. Calhoun	449,288	752,982	--	303,694
20. Camden	993,104	755,893	237,211	--
21. Candler	532,371	716,804	--	184,433
22. Carroll	2,580,071	2,765,663	--	185,592
23. Catoosa	948,805	1,105,100	--	156,295
24. Chatahoochee	830,116	569,380	260,736	--
25. Chatam	19,741,104	8,276,673	11,464,431	--
26. Chattooga	481,292	172,362	308,930	--
27. Chatham	1,304,814	1,469,860	--	165,046
28. Cherokee	1,654,007	1,871,313	--	217,306
29. Charlton	4,101,074	2,100,146	1,710,928	--
30. Clay	238,341	437,294	--	198,953
31. Clayton	2,330,643	2,087,381	243,262	--
32. Clinch	537,142	607,437	--	69,295
33. Cobb	8,441,674	4,767,343	3,674,331	--
34. Coffee	1,572,389	1,844,065	--	271,676
35. Colquhoun	2,634,314	2,546,982	87,332	--
36. Columbia	569,298	1,130,954	--	561,656

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	County	Received from	Payments to	Excess	Deficiency
37.	Cook	880,858	1,077,540	--	196,682
38.	Covata	2,510,607	2,147,388	363,219	--
39.	Crawford	386,495	582,401	--	195,906
40.	Crisp	1,517,700	1,573,607	--	55,907
41.	Dade	307,214	670,437	--	163,223
42.	Dawson	195,998	421,706	--	225,708
43.	DeCATUR	1,773,698	1,841,842	--	68,144
44.	DeKalb	17,168,384	7,478,401	9,690,183	--
45.	Dodge	1,062,405	1,690,610	--	628,205
46.	Dooly	786,419	1,883,267	--	1,096,848
47.	Dougherty	6,324,309	3,442,272	2,882,237	--
48.	Douglas	919,444	1,155,077	--	235,633
49.	Durley	881,480	1,410,268	--	528,788
50.	Echols	82,163	279,620	--	197,457
51.	Effingham	478,286	1,008,327	--	530,041
52.	Elbert	1,302,315	1,398,164	--	295,849
53.	Emmanuel	1,409,383	1,840,282	--	430,899
54.	Evans	769,191	629,709	139,482	--
55.	Fannin	782,642	1,112,719	--	330,077
56.	Fayette	893,903	740,235	--	244,332
57.	Floyd	3,643,911	3,493,774	1,172,137	--
58.	Forsyth	779,725	971,268	--	191,543
59.	Franklin	922,445	1,378,838	--	456,393
60.	Fulton	81,771,423	22,361,693	59,409,730	--
61.	Gilmer	379,062	839,927	--	280,865
62.	Glascock	143,338	397,432	--	252,074
63.	Glynn	3,641,128	1,808,812	1,832,316	--
64.	Gordon	1,397,592	1,358,449	39,143	--
65.	Grady	1,199,939	1,453,511	--	293,572
66.	Greene	619,643	1,119,060	--	499,417
67.	Gwinnett	2,798,807	2,976,775	--	178,768
68.	Habersham	1,443,391	1,443,384	7	--
69.	Hall	4,803,401	2,944,742	1,858,659	--
70.	Hancock	469,884	948,536	--	478,652
71.	Harrison	1,111,257	1,237,989	--	126,732
72.	Harrie	843,868	957,602	--	315,734
73.	Hart	999,016	1,443,382	--	444,366
74.	Heard	251,748	675,132	--	423,384
75.	Henry	997,370	1,300,251	--	302,881
76.	Houston	2,888,181	1,938,269	263,932	--
77.	Irwin	696,315	939,263	--	244,948
78.	Jackson	1,376,612	1,531,212	--	154,600
79.	Jasper	337,479	663,612	--	326,133
80.	Jeff Davis	537,602	837,838	--	280,236
81.	Jefferson	1,022,601	1,724,413	--	701,812
82.	Jenkins	621,642	798,005	--	176,363
83.	Johnson	452,395	887,145	--	434,750
84.	Jones	489,742	713,731	--	223,989
85.	Lamar	787,836	834,489	--	46,653

		304,409	342,301		
		2,472,043	2,779,651		
		250,124	397,114		
		803,326	1,192,632		
	Lincoln	307,429	394,709	--	267,400
91.	Long	284,637	432,533	--	147,000
92.	Lowndes	3,935,383	3,162,146	773,237	--
93.	Lumpkin	427,098	655,889	--	228,791
94.	Macon	754,472	1,221,491	--	467,919
95.	Madison	488,961	1,222,992	--	734,031
96.	Marion	291,930	714,781	--	422,851
97.	McDuffie	1,181,101	1,102,435	78,666	--
98.	McIntosh	430,830	637,423	--	200,591
99.	Meriwether	1,107,847	1,628,600	--	520,753
100.	Miller	489,719	763,751	--	274,032
101.	Mitchell	1,396,276	1,867,866	--	511,590
102.	Monroe	692,489	821,331	--	128,842
103.	Montgomery	311,463	717,787	--	406,324
104.	Morgan	627,803	1,038,453	--	410,650
105.	Murray	715,189	769,930	--	54,741
106.	Muscogee	12,351,852	6,101,018	6,250,834	--
107.	Newton	1,287,518	1,412,856	--	125,330
108.	Oconee	277,889	570,570	--	292,781
109.	Oglethorpe	329,776	855,370	--	525,594
110.	Paulding	683,417	1,146,804	--	462,347
111.	Peach	1,112,983	1,026,556	86,427	--
112.	Pickens	640,706	679,539	--	38,837
113.	Pierce	631,572	906,100	--	274,520
114.	Pike	270,814	768,115	--	497,301
115.	Polk	1,426,367	2,028,839	--	198,472
116.	Pulaski	725,072	821,700	--	96,300
117.	Putnam	321,530	770,750	--	249,226
118.	Quitman	106,985	349,633	--	242,640
119.	Rabun	644,297	803,461	--	159,164
120.	Randolph	725,271	970,435	--	245,164
121.	Richmond	10,755,115	3,647,804	3,111,311	--
122.	Rockdale	612,157	730,109	--	117,952
123.	Schley	189,916	373,543	--	183,627
124.	Screven	1,034,667	1,453,940	--	417,501
125.	Seminole	601,198	676,675	--	75,477
126.	Spalding	2,283,046	2,195,835	787,211	--
127.	Stephens	1,373,138	1,507,389	--	134,451
128.	Stewart	490,990	712,818	--	281,821
129.	Sumter	1,719,952	1,765,802	--	45,840
130.	Talbot	321,307	686,378	--	359,991
131.	Taliaferro	157,609	434,303	--	281,094
132.	Tattnall	974,610	1,289,868	--	315,258
133.	Taylor	342,133	923,193	--	381,062

<u>County</u>	<u>Received from</u>	<u>Payments to</u>	<u>Excess</u>	<u>Deficiency</u>
134. Telfair	942,682	1,404,442	--	461,760
135. Terrell	828,071	1,218,770	--	390,699
136. Thomas	2,694,890	2,575,254	119,636	--
137. Tift	1,847,240	1,588,473	258,767	--
138. Toombs	1,547,668	1,370,669	176,999	--
139. Towns	318,976	546,965	--	227,989
140. Treutlen	315,532	716,052	--	400,520
141. Troup	3,625,619	3,439,164	186,455	--
142. Turner	618,461	807,645	--	189,184
143. Twiggs	333,877	765,566	--	431,689
144. Union	322,835	698,144	--	375,309
145. Upson	2,028,399	1,822,562	205,837	--
146. Walker	2,798,542	2,603,035	195,507	--
147. Walton	1,380,948	1,599,157	--	218,209
148. Ware	2,945,693	2,283,654	662,039	--
149. Warren	383,345	749,817	--	366,472
150. Washington	1,123,039	1,756,868	--	633,829
151. Wayne	1,654,547	1,400,813	253,734	--
152. Webster	146,248	344,097	--	197,849
153. Wheeler	268,072	763,741	--	495,669
154. White	390,249	664,665	--	274,416
155. Whitfield	4,009,500	2,532,331	1,477,169	--
156. Wilcox	496,056	942,335	--	446,279
157. Wilkes	793,061	1,138,770	--	345,709
158. Wilkinson	495,517	823,425	--	327,908
159. Worth	951,941	1,483,410	--	531,469

NOTE: All figures are rounded to the nearest dollar.

The column headed "Received from" reflects all taxes paid into the State Treasury by the 159 counties. This data was verified by Schedule No. 1, "Statistical Report of the Department of Revenue of the State of Georgia", 1959-1960.

The column headed "Payments to" reflect all payments by the State Treasury to each of the 159 counties for: Confederate pensions, Education, State Aid to Counties for Roads, Public Health, and Public Welfare. These were direct payments to the counties for county services. This data was verified by "Report of State Auditor of Georgia, year ending June 30, 1960".

The column headed "Excess" lists the amounts that these counties paid into the State Treasury above the amounts received back from it. These have been known as "Creditor" counties. There are 38 of them.

The column headed "Deficiency" lists the amounts of payments such counties receive back from the State in excess of the amount they pay to the State Treasury. They have been known as "Debtor Counties". There are 121 of them.

[fol. 182]

PLAINTIFFS' EXHIBIT 14

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

CIVIL ACTION

No. 7872

JAMES O'HEAR SANDERS

VS.

JAMES H. GRAY ET AL

GEORGIA
FULTON COUNTY

PERSONALLY APPEARED before me the undersigned officer duly authorized by law to administer oaths, PHILIP HAMMER, who after being sworn, deposes and says:

My name is Philip Hammer. I am a registered voter and homeowner in Fulton County and am temporarily maintaining a residence in Washington, D. C. where the headquarters of my firm are located.

I am an economist and president of my own firm of economic consultants, Hammer & Company Associates, Inc., a Georgia corporation with offices in Atlanta and Washington. My field is development economics which is concerned primarily with the location of industrial and commercial enterprises, the feasibility of private and public investments in new income-producing facilities, and the economics of urban and metropolitan area growth. I have personally made economic studies in every major city and in every section of Georgia, and my studies have been instrumental in stimulating and directing millions of dollars worth of public and private investment in this State. As a consultant to private business and local government,

[fol. 183] I have objectively studied the economy of the State and its sub-regions. I have also made economic studies in major cities and metropolitan areas in other parts of the United States and am currently engaged in development studies in twenty-two cities in twelve states. My clients include manufacturers, retailers, private investors, insurance companies, banks, savings and loan associations, public utilities, real estate developers and public agencies.

I graduated from the University of North Carolina in Political Science in 1936 and spent 2 years at Harvard University studying economics, first as a Rockefeller Fellow and later as a Littauer Fellow in Public Administration. I served one year as staff assistant to the late Senator Robert M. LaFollette of Wisconsin and two years as administrative assistant to former Governor Herbert H. Lehman of New York in the State Department. I was director for two years of the Program Analysis Staff of the Farm Security Administration (now the Farmers Home Administration) and made many official trips to Georgia in that capacity. I have been director of the Metropolitan Planning Commission of Atlanta and have been president of my own economic consulting firm since February, 1954.

First, I would like to present a set of observations, and next I would like to set forth some factual information on Georgia trends, bearing upon the case at hand.

My observations concern the increased importance of the responsible role of state governments. The nationwide shift to urban areas is rapid and continuous. For sound economic reasons, industry, commerce and population will be increasingly concentrated in the nation's urban and metropolitan centers. In these areas of tremendous growth and [fol. 184] development, the problems of government have already become acutely serious and promise to become more so in the days ahead—in finance, in the provisions of the necessary services and in the efficiency of administration.

I strongly believe that the only alternative to increasing Federal intervention in the affairs of urban communities is stronger, more urban-minded and more efficient state governments. Already the vacuums created by state in-

difference to urban problems has brought the Federal Government heavily into local affairs. Through the incapacity and unwillingness of State governments to concern themselves with the problems of the local political subdivisions that they have created, both local and state authorities are losing control over their own affairs, and the Federal power and responsibility is rapidly increasing.

In the State of Georgia, the rapidly-growing urban and industrial economy provides no justification for the system of rural control that underlies the state government. On the basis of my studies, I would like to present some factual information showing the sharp disparity between the patterns of economic development and political responsibility with which we are faced.

In 1956, the eight 6-unit counties in Georgia—with only 12% of the unit votes—accounted for nearly 53% of the \$5.2 billion dollars of personal income in the state. The 2-unit counties with 59% of the unit votes account for less than one-fourth of the income. Moreover, the proportion of the State's personal income concentrated in the 6-unit—and also in the 4-unit—counties has been steadily increasing.

The following table shows the distribution of income [fol. 185] between the three groups of counties in pre-war 1939 and in 1956, the most recent year for which accurate data are available.

TABLE 1. *Distribution of Personal Income,
State of Georgia 1939 and 1956.*

	Percent of Unit Votes	Percent of Income		Gain in Income
		1939	1956	1939-56
6-unit counties	11.7%	42.3%	52.6%	574%
4-unit counties	29.3	21.6	23.9	498%
2-unit counties	59.0	36.1	23.5	253%
State as whole	100.0%	100.0%	100.0%	442%

The above figures are given in terms of current, not constant dollars and they reflect a substantial amount of inflation between 1939 and 1956. Even in terms of constant dollars with the effects of inflation eliminated, however,

the relative proportions among the three groups of counties would remain the same.

Another clear index showing the disparity between unit votes and economic capacity is the figure given by combining two major production factors—wages paid to production workers in manufacturing and net value of farm products sold. These factors account for only a part of total income, but they provide a good index of basic economic capacity. In 1954, nearly half of the \$822 million in combined factory wages and farm receipts in Georgia was accounted for by the 6-unit counties.

The distribution of these receipts by the three groups of counties for the years 1929 and 1954 is shown below:

[fol. 186]

TABLE 2. *Distribution of Factory Wages and Net Value of Farm Products Sold, Combined State of Georgia 1929 and 1954*

	Percent of Unit Votes	Percent of Receipts 1929	Percent of Receipts 1954	Gain in Receipts 1929-54
6-unit counties	11.7%	26.7%	45.6%	565%
4-unit counties	29.3	28.1	31.1	330%
2-unit counties	59.0	45.2	23.3	101%
State as whole	100.0%	100.0%	100.0%	294%

As shown above, combined factory and farm receipts in the 2-unit counties doubled in the twenty-five year period between 1929 and 1954, primarily as a result of gains in the dollar value of farm products sold. However, the heavy industrialization in the 6-unit and 4-unit counties brought about much greater increases in the economic returns of those areas.

Another index of economic wealth and productivity is taxable property values, both real and property. Although there are sharp differences in assessment procedures among the counties, property values reflect in part the strength of the local economy. In 1959, the last year for which accurate figures are available, the 6-unit counties accounted for nearly two-thirds of the taxable property values of the State of Georgia. There was an increase in the proportion

of the total represented by these counties in the period between 1940 and 1959:

TABLE 3. *Distribution of Taxable Property Values, State of Georgia, 1940-59*

	<i>Percent of Unit Votes</i>	<i>Percent of Values</i>		<i>Gain in Values, 1940-59</i>
		<i>1940</i>	<i>1959</i>	
6-unit counties	11.7%	58.2%	64.8%	257%
4-unit counties	29.3	20.1	18.5	197%
2-unit counties	59.0	21.7	16.7	145%
State as whole	100.0%	100.0%	100.0%	220%

[fol. 187] One further set of figures is illuminating. In 1960, the average number of years completed in school of persons 25 years of age or over was distinctly higher in the 6-unit and 4-unit counties taken as groups than in the 2-unit counties. The figures are shown below:

TABLE 4. *Median Number of School Years Completed by Persons 25 Years or Over, State of Georgia, 1960*

6-unit counties	10.66
4-unit counties	8.69
2-unit counties	8.09
State as whole	9.34

Every index shows the increasing strength of the urban economies of Georgia and every comparison highlights the disparity in geographical distribution of economic capacity and political control.

This affidavit is given for the purpose of being used as evidence in the above case.

/s/ PHILIP G. HAMMER

Sworn to and subscribed before me
this 25 day of April, 1962

/s/ ANN McMILLAN

Notary Public

Notary Public, Georgia, State at Large

My Commission Expires Mar. 31, 1965

[SEAL]

[Handwritten notation—I certify I have served a copy of the within affidavit on counsel opposite by mailing a copy of same. This 26 April, 1962, Morris B. Abram, counsel for plaintiff.]



I, Ben M. Fortson, Jr., Secretary of State of the State of Georgia, do hereby certify, that the two pages of of photographed matter hereto attached contain a true and correct copy of the number of registered voters for the years 1954, 1956, 1958 and 1960 as appears in the 1960 files in the office of Secretary of State.

[fol. 188]

PLAINTIFFS' EXHIBIT 15

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 26th day of April, in the year of our Lord One Thousand Nine Hundred and Sixty-Two and of the Independence of the United States of America the One Hundred and Eighty-Sixth.

Ben M. Fortson Jr.
SECRETARY OF STATE.

188

STATE OF NEW YORK

COUNTRIES AND COUNTY SITES IN RED-CELL

V. J. COUNTY		Cov. Thomas		1920	1920	1920	1920
1	ADAMS	Bacon	8,241	8,241	7,772	7,772	7,772
2	ALABAMA	Panola	3,335	3,335	3,335	3,335	3,335
3	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
4	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
5	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
6	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
7	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
8	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
9	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
10	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
11	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
12	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
13	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
14	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
15	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
16	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
17	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
18	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
19	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
20	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
21	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
22	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
23	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
24	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
25	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
26	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
27	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
28	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
29	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
30	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
31	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
32	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
33	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
34	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
35	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
36	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
37	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
38	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
39	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
40	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
41	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
42	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
43	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
44	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
45	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
46	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
47	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
48	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
49	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
50	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
51	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
52	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
53	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
54	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
55	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
56	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
57	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
58	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
59	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
60	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
61	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
62	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
63	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
64	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
65	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
66	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
67	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
68	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
69	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
70	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
71	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
72	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
73	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
74	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
75	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
76	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
77	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
78	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
79	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
80	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
81	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
82	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
83	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
84	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
85	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
86	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
87	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
88	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
89	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
90	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
91	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
92	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
93	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
94	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
95	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
96	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
97	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
98	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
99	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335
100	ALABAMA	Ala.	3,335	3,335	3,335	3,335	3,335

COUNTIES AND COUNTY SEATED IN GEORGIA

COUNTY	COUNTY SEATED	1934	1935	1936	1937
2 JEFFERSON	Louisville	8,253	8,253	8,284	8,321
2 JENKINS	Williston	3,240	3,269	3,296	3,341
2 JOHNSON	Wrightsville	3,309	3,303	3,273	3,210
2 JONES	Gray	2,419	2,379	2,659	3,043
2 LAMAR	Barnesville	3,048	3,183	3,200	3,278
2 LANIER	Lakeland	2,274	2,479	2,344	2,460
4 LAURENS	Dublin	18,431	18,972	18,745	18,829
2 LEE	Laurensburg	1,203	1,212	1,310	1,239
2 LIBERTY	Minersville	3,928	4,329	4,120	4,014
2 LINCOLN	Lincolnton	2,292	1,661	2,444	2,723
2 LONG	Ludowici	2,502	2,242		3,670
4 LOWMEDES	Valdosta	13,222	13,001	14,564	14,969
2 LUMPKIN	Dahlgren	4,933	4,204	3,993	2,747
2 MACON	Oglethorpe	3,124	3,351	3,202	3,470
2 MADISON	Danielsville	3,528	4,731	4,643	4,807
2 MARION	Buena Vista	1,396	1,406	1,382	1,363
2 McDUFFIE	Thomson	4,200	4,338	4,468	4,297
2 McINTOSH	Darien	2,785	2,667	2,615	2,890
4 MERIWETHER	Greenville	8,013	8,574	8,384	8,458
2 MILLER	Colquitt	3,277	3,499	3,363	3,193
4 MITCHELL	Camilla	8,833	7,781	7,673	5,326
2 MONROE	Forsyth	4,311	3,796	4,086	3,805
2 MONTGOMERY	Mt. Vernon	1,435	1,163	1,320	1,908
2 MORGAN	Medison	4,212	3,354	3,353	3,820
2 MURRAY	Chatsworth	4,458	4,831	4,992	5,412
6 MUSCOGEE	Columbus	35,000	29,982	28,588	28,542
2 NEWTON	Covington	9,463	10,263	10,963	10,642
2 OCONEE	Watkinsville	3,348	3,730	3,596	2,275
2 OGLETHORPE	Lexington	2,810	3,206	3,157	3,058
2 PAULDING	Dallas	8,068	8,149	8,286	8,169
2 PEACH	Ft. Valley	2,058	3,124	3,218	3,198
2 PICKENS	Jasper	2,932	3,338	4,424	4,840
2 PIERCE	Blackshear	3,500	3,501	3,740	4,234
2 PIKE	Zebulon	2,440	3,048	3,013	3,320
4 POLK	Cadotown	16,192	15,840	11,006	11,571
2 PULASKI	Hawkinsville	2,868	3,323	3,003	3,355
2 PUTNAM	Estonton	2,737	3,056	2,934	3,173
2 QUITMAN	Georgetown	722	808	764	804
2 RALPH	Clayton	4,193	4,766	4,878	5,263
2 RANDOLPH	Cuthbert	3,216	3,066	3,078	2,856
6 RICHMOND	Augusta	26,588	28,620	29,080	28,867
2 ROCKDALE	Conyers	1,622	1,066	1,066	1,667
2 SCHLEY	Ellaville	1,058	1,116	1,164	1,027
2 SCREVEN	Sylvania	3,608	3,830	3,562	4,027
2 SEMINOLE	Donelsonville	3,212	3,364	3,201	3,500
4 SPALDING	Griffin	10,742	8,228	8,849	10,272
2 STEPHENS	Yocco	2,226	2,262	3,682	3,805
2 STEWART	Lumpkin	2,156	2,262	3,682	3,805
4 SUMTER	Americus	8,867	8,068	8,667	8,035
2 TALBOT	Talbott	1,472	1,622	1,667	1,799
2 TALLADEMA	Crawfordsville	1,603	2,007	1,619	1,640
2 TATTNALL	Rossville	8,794	10,006	9,904	8,417
2 TAYLOR	Butler	3,180	3,449	3,450	3,296
2 TELFAIR	McRae	8,920	7,558	7,558	7,576
2 TERRELL	Dawson	3,776	3,391	2,858	2,965
2 THOMAS	Thomasville	9,982	10,344	10,001	9,536
4 TIFT	Tifton	7,600	8,768	7,296	8,121
2 TOOMBS	Lyons	3,528	4,517	5,713	6,511
2 TOWNS	Hiwassee	2,400	2,123		2,516
2 TREUTLEN	Spartan	1,220	3,559	2,552	2,683
4 TROUP	LaGrange	16,704	16,865	15,960	15,681
2 TURNER	Auburn	1,807	4,667	4,367	3,996
2 TWIGGS	Jeffersonville	2,867	2,940	2,863	1,926
2 UNION	Blairsville	4,693	4,872	4,944	5,462
4 UPSON	Thomaston	7,523	6,467	5,903	6,123
4 WALKER	LaFayette	22,802	23,356	24,631	25,061
2 WALTON	Monroe	7,310	8,130	7,678	8,583
4 WARE	Waycross	17,768	13,338	13,736	16,756
2 WARREN	Warrenton	2,076	2,304	2,201	1,931
2 WASHINGTON	Sandersville	2,617	2,563	2,600	2,661
2 WAYNE	Jasp	4,950	4,788	4,370	3,705
2 WEBSTER	Proctor	1,281	908	926	800
2 WHEELER	Alamo	3,668	3,682	3,582	3,276
2 WHITE	Cleveland	3,963	4,119	4,121	4,662
4 WHITFIELD	Dalton	21,000	18,338	18,777	17,756
2 WILCOX	Abbeville	6,382	3,478	3,289	3,967
2 WILKES	Washington	3,228	3,788	3,656	3,779
2 WILKINSON	Irwin	2,171	3,422	3,632	3,632
2 WORTH	Sylvester	1,883	4,118	4,181	4,311
TOTALS		1,873,903	1,810,386	1,806,021	1,803,139

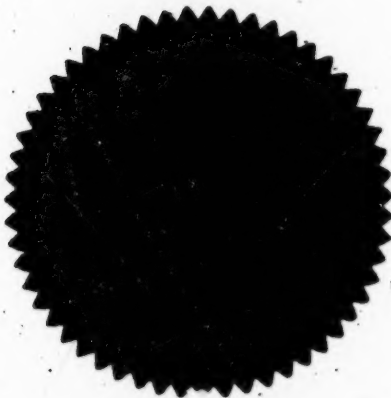


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PLAINTIFFS' EXHIBIT 16

I, Ben M. Fortson, Jr., Secretary of State of the State of Georgia, do hereby certify that the one page of photographed matter hereto attached contains a true and correct copy of the number of registered voters for the year 1958 as the same appears in the 1958 files in the office of Secretary of State.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 26th day of April, in the year of our Lord One Thousand Nine Hundred and Sixty-Two and of the Independence of the United States of America the One Hundred and Eighty-Sixth.



Ben M. Fortson Jr.

SECRETARY OF STATE.

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COUNTIES AND COUNTY SITES IN GEORGIA

Page 1.

UNIT	VOTE	COUNTY	COURTHOUSE	White	Colored	Total		
2		APPLING	Baxley	6,612	1,140	7,752	✓	
2		ATKINSON	Pearson	4,164	797	4,961	✓	
2		BACON	Alma	6,105	22	6,127	✓	
2		BAKER	Newton	1,670	0	1,670	✓	
4		BALDWIN	Milledgeville	7,675	2,618	10,293	✓	
2		BANKS	Homer	4,420	44	4,464	✓	
2		BARROW	Winder	5,858	312	6,160	✓	
4		BARTOW	Cartersville	11,239	1,203	12,442	✓	
2		BEN HILL	Fitzgerald	3,797	930	4,727	✓	
2		BERRIEN	Nashville	4,177	403	4,580	✓	
6		BIBB	Macon	26,124	4,913	31,037	✓	
2		BLECKLEY	Cochran	3,346	45	3,391	✓	
2		BRANTLEY	Nahunta	3,767	226	3,993	✓	
2		BROOKS	Quitman	4,321	695	5,016	✓	
2		BRYAN	Pembroke	1,972	817	2,789	✓	
4		BULLOCH	Statesboro	7,899	1,390	9,289	✓	
4		BURKE	Waynesboro	3,664	427	4,091	✓	
2		BUTTS	Jackson	3,810	1,437	5,247	✓	
2		CALHOUN	Morgan	1,682	132	1,814	✓	
2		CAMDEN	Woodbine	2,606	1,385	3,991	✓	
2		CANDLER	Metter	3,195	1,174	4,369	✓	
4		CARROLL	Carrollton	13,680	925	14,605	✓	
2		CATOOSA	Ringgold	9,938	70	10,008	✓	
2		CHARLTON	Folkston	2,293	40	2,333	✓	
6		CHATHAM	Savannah	36,943	9,250	46,193	✓	
2		CHATTAHOOCHEE	Cusseta	284	8	292	✓	
4		CHATTOOGA	Summerville	11,250	1,011	12,261	✓	
2		CHEROKEE	Canton	12,879	190	13,069	✓	12,087 - 13,015
4		CLARKE	Athens	14,255	3,136	17,391	✓	
2		CLAY	Ft. Gaines	1,013	94	1,107	✓	
4		CLAYTON	Jonesboro	11,441	477	11,918	✓	
2		CLINCH	Homerville	2,429	319	2,748	✓	
6		COBB	Marietta	28,134	1,908	30,042	✓	
4		COFFEE	Douglas	10,058	942	11,000	✓	
4		COLQUITT	Moultrie	13,000	965	13,965	✓	
2		COLUMBIA	Appling	3,423	510	3,933	✓	
2		COOK	Adel	6,000	500	6,500	✓	
4		COWETA	Newnan	11,597	1,647	13,244	✓	
2		CRAWFORD	Knoxville	1,496	155	1,651	✓	
2		CRISP	Cordele	4,785	721	5,506	✓	
2		DADE	Trenton	3,678	40	3,718	✓	
2		DAWSON	Dawsonville	2,172	0	2,172	✓	
4		DECATUR	Bainbridge	7,530	960	8,490	✓	
6		DEKALB	Decatur	64,450	2,153	66,603	✓	
2		DODGE	Eastman	8,728	2,028	10,756	✓	
2		DOOLY	Vienna	4,252	722	4,974	✓	

2	COOK	Adel	6,000	500	6,500	
4	COWETA	Newnan	11,597	1,647	13,244	
2	CRAWFORD	Knoxville	1,496	155	1,651	
2	CRISP	Cordele	4,785	721	5,506	
2	DADE	Trenton	3,678	40	3,718	
2	DAWSON	Dawsonville	2,172	0	2,172	
4	DECATUR	Bainbridge	7,530	960	8,490	
6	DEKALB	Decatur	64,450	2,153	66,603	
2	DODGE	Eastman	8,728	2,028	10,756	
2	DOOLY	Vienna	4,252	722	4,974	
4	DOUGHERTY	Albany	10,815	2,628	13,443	
2	DOUGLAS	Douglasville	6,946	832	7,778	
2	EARLY	Blakely	3,812	205	4,017	
2	ECHOLS	Statenville	804	15	819	
2	EFFINGHAM	Springfield	2,618	188	2,806	
2	ELBERT	Elberton	9,012	1,104	10,116	
2	EMANUEL	Swainsboro	7,252	1,762	9,014	
2	EVANS	Claxton	2,206	483	2,689	
2	FANNIN	Blue Ridge	8,503	19	8,522	
2	FAYETTE	Fayetteville	3,204	25	3,229	
6	FLOYD	Rome	19,244	1,523	20,767	
2	FORSYTH	Cumming	4,148	0	4,148	
2	FRANKLIN	Carnesville	5,500	300	5,800	
6	FULTON	Atlanta	104,877	28,414	133,291	
2	GILMER	Ellijay	4,454	6	4,460	
2	GLASCOCK	Gibson	1,339	19	1,358	
4	GLYNN	Brunswick	7,425	2,039	9,464	
2	GORDON	Calhoun	7,702		7,702	(Not Broken down)
2	GRADY	Gairo	5,076	831	5,907	
2	GREENE	Greensboro	5,053	2,728	7,781	
4	GWINNETT	Lawrenceville	16,498	1,002	17,500	
2	HABERSHAM	Clarksville	8,223	200	8,423	(Approximate)
4	HALL	Gainesville	17,542	1,209	18,751	
2	HANCOCK	Sparta	2,064	1,730	3,794	
2	HARALSON	Buchanan	11,443	751	12,194	
2	HARRIS	Hamilton	3,635	215	3,850	
2	HART	Hartwell	5,944	294	6,238	
2	HEARD	Franklin	2,475	374	2,849	
2	HENRY	McDonough	5,442	1,662	7,104	
2	HOUSTON	Perry	7,739		7,739	(Cannot break down)
2	IRWIN	Ocilla	4,500	700	5,200	
2	JACKSON	Jefferson	7,209	450	7,659	
2	JASPER	Monticello	2,530	804	3,334	
2	JEFF DAVIS	Hazlehurst	6,134	56	6,190	

COUNTIES AND COUNTY SITES IN GEORGIA—Concluded

UNIT VOTE	COUNTY	COURTHOUSE	White	Colored	Total		
2	JEFFERSON	Louisville	4,120	264	4,384		
2	JENKINS	Millen	2,502	694	3,196		
2	JOHNSON	Wrightsville	3,655	268	3,923		
2	JONES	Gray	2,048	611	2,659		
2	LAMAR	Barnesville	2,801	899	3,700		
2	LANIER	Lake land	1,892	452	2,344		
4	LAURENS	Dublin	13,218	3,507	16,725		
2	LEE	Leesburg	1,281	29	1,310		
2	LIBERTY	Hinesville	2,128	2,472	4,600		
2	LINCOLN	Lincolnton	2,437	3	2,440		
2	LONG	Ludowici					
4	LOWNDES	Valdosta	11,860	2,704	14,564		
2	LUMPKIN	Dahlonega	3,912	83	3,995		
2	MACON	Oglethorpe	3,024	178	3,202		
2	MADISON	Danielsville	4,588	55	4,643		
2	MARION	Buena Vista	1,330	52	1,382	(Not broken down)	
2	McDUFFIE	Thomson	4,089	379	4,468		
2	McINTOSH	Darien	1,396	1,219	2,615		
4	MERIWETHER	Greenville	5,457	927	6,384		
2	MILLER	Colquitt	3,357	6	3,363		
4	MITCHELL	Camilla	7,298	375	7,673		
2	MONROE	Forsyth	3,333	753	4,086		
2	MONTGOMERY	Mt. Vernon	3,315	1,005	4,320		
2	MORGAN	Madison	2,615	738	3,353		
2	MURRAY	Chatsworth	4,962	35	4,997		
6	MUSCOGEE	Columbus	22,859	3,729	26,588		
2	NEWTON	Covington	9,058	1,905	10,963		
2	OCONEE	Watkinsville	3,224	372	3,596		
2	OGLETHORPE	Lexington	2,958	199	3,157		
2	PAULDING	Dallas	7,851	435	8,286		
2	PEACH	Ft. Valley	2,539	679	3,218		
2	PICKENS	Jasper	4,393	101	4,494		
2	PIERCE	Blackshear	3,388	381	3,769		
2	PIKE	Zebulon	2,520	496	3,016		
4	POLK	Cedartown	9,852	1,154	11,006		
2	PULASKI	Hawkinsville	2,853	235	3,088		
2	PUTNAM	Eatonton	2,366	570	2,936		
2	QUITMAN	Georgetown	721	42	763		
2	RABUN	Clayton	4,867	11	4,878		
2	RANDOLPH	Cuthbert	2,585	493	3,078		
6	RICHMOND	Augusta	23,260	5,820	29,080		
2	ROCKDALE	Conyers	3,501	563	4,064		
2	SCHLEY	Ellaville	1,006	158	1,164		
2	SCREVEN	Sylvania	3,027	535	3,562		
2	SEMINOLE	Donalsonville	3,172	29	3,201		
4	SPALDING	Griffin					

2	PUTNAM	Eatonton	2,853	235	3,088
2	QUITMAN	Georgetown	2,366	570	2,936
2	RABUN	Clayton	721	12	761
2	RANDOLPH	Cuthbert	4,867	11	4,878
2	RANDOLPH	Cuthbert	2,525	493	3,078
6	RICHMOND	Augusta	23,260	5,820	29,080
2	ROCKDALE	Conyers	3,501	563	4,064
2	SCHLEY	Ellaville	1,006	158	1,164
2	SCREVEN	Sylvania	3,027	535	3,562
2	SEMINOLE	Donalsonville	3,172	29	3,201
4	SPALDING	Griffin			
2	STEPHENS	Toccoa	8,242	627	8,869
2	STEWART	Lumpkin	1,555	107	1,662
4	SUMTER	Americus	5,164	483	5,647
2	TALBOT	Talbotton	1,448	219	1,667
2	TALIAFERRO	Crawfordville	913	756	1,669
2	TATTNALL	Reidsville	8,224	1,680	9,904
2	TAYLOR	Butler	3,103	347	3,450
2	TELFAIR	McRae	7,389	169	7,558
2	TERRELL	Dawson	2,810	48	2,858
4	THOMAS	Thomasville	8,422	1,579	10,001
4	TIFT	Tifton	6,681	1,113	7,794
2	TOOMBS	Lyons	5,543	170	5,713
2	TOWNS	Hiawassee			
2	TREUTLEN	Soperton	2,521	31	2,552
4	TROUP	LaGrange	13,836	2,104	15,940
2	TURNER	Ashburn	3,893	474	4,367
2	TWIGGS	Jeffersonville	2,517	348	2,865
2	UNION	Blairsville	4,944	0	4,944
4	UPSON	Thomaston	5,437	466	5,903
4	WALKER	LaFayette	23,324	1,127	24,451
2	WALTON	Monroe	6,873	805	7,678
4	WARE	Waycross	11,418	2,318	13,736
2	WARREN	Warrenton	2,006	195	2,201
2	WASHINGTON	Sandersville	6,696	1,704	8,400
2	WAYNE	Jesup	7,931	1,439	9,370
2	WEBSTER	Preston	934	0	934
2	WHEELER	Alamo	3,157	435	3,592
2	WHITE	Cleveland	3,932	189	4,121
4	WHITFIELD	Dalton	15,920	857	16,777
2	WILCOX	Abbeville	3,059	230	3,289
2	WILKES	Washington	3,364	290	3,654
2	WILKINSON	Irwinton	3,041	411	3,452
2	WORTH	Sylvester	5,855	296	6,151

Totals 1,127,939 158,082 1,286,021

Note: 3 Counties failed to send in their figures.

[fol. 193]

PLAINTIFFS' EXHIBIT 17

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Civil Action No. 7872

JAMES O'HEAR SANDERS

VS.

JAMES H. GRAY ET AL

GEORGIA
FULTON COUNTY

Personally appeared before me the undersigned officer duly authorized by law to administer oaths, WILSON BROOKS, who, after being sworn, deposes and says:

That he is a member of the General Assembly of the State of Georgia representing the County of Fulton. In that capacity deponent was invited to a conference and briefing session called by the Governor of Georgia and held in the Senate Chamber, State Capitol, on April 10, 1962, at 10:00 A.M., pursuant to a telegram from said Governor, copy of which is hereto attached, made a part hereof and marked Exhibit A.

Attending said conference were the Governor of Georgia, the Attorney General of Georgia, B. D. Murphy, Lamar Sizemore and Freeman Leverett, all associated with the Governor in his presentation. The presentation was made to representatives of the Fourth and Fifth Congressional Districts who serve in the General Assembly.

[fol. 194] The purpose of said conference as outlined by the Governor was, amongst other things, to devise a method preserving the "traditional" method of voting in the state-wide Democratic Primaries, namely, the county unit system. The gist of the Governor's remarks was to encourage

steps to preserve and protect the county unit system and as near as possible to preserve the present method of apportionment in the General Assembly of Georgia.

The Governor, the Attorney General, Mr. Murphy, Mr. Sizemore and Mr. Leverett all were in agreement that the suit captioned above represented a real threat to the county unit system and that the system was legally doomed if the General Assembly did not undertake some method of saving it.

From counsel participating with the Governor in the conference it was clear that the purpose of the conference and the legislative call was and is to preserve the county unit system without breaking down the traditional voting strength of the smaller counties under the county unit system as now enforced.

The Governor has proposed since March 26, 1962, a plan by which Fulton County would be accorded 38 unit votes, but subsequent adjustments have reduced that number to his present proposal of 22.

All of the counsel, including the Attorney General, Mr. Murphy, Mr. Sizemore and Mr. Leverett at said meeting showed an intimate familiarity with legal precedents involved in constitutional issues presented by the captioned case; counsel Murphy citing from memory the style of other cases in which he had been counsel involving the county unit system and giving the conferees the benefit of the holdings of said cases and his interpretation of their effect upon the issues presented in the captioned case. Counsel Murphy throughout the briefing session did not use notes [fol. 195] but appeared to speak from memory and without hesitation. Other counsel present read from Federal and Georgia Constitutions and a number of cases, leading up to and including the case of *Baker v. Carr*. All counsel present showed a comprehension and understanding of the latest case of *Baker v. Carr*. Furthermore, counsel Sizemore displayed a comprehensive grasp of the issues involved not only in the captioned case but in the so-called field of Congressional apportionment.

Your deponent has been a member of the General Assembly for three terms, representing there the County of Fulton and he knows the distribution of the voting strength of the

General Assembly as well as the political stakes involved in the county unit system. Knowing this, your deponent is of the opinion that no meaningful adjustment of the discrimination against Fulton and other large counties under the county unit system will, as a matter of practical politics, be passed in the Special Session of the General Assembly as presently composed unless the same be required by the Federal Court.

The general tenor of the briefings of the Governor, the Attorney General, and the associated counsel present at the said meeting of April 10, 1962 was to preserve and protect the county unit system, maintaining as far as possible existing discrimination ratios and to do as little as possible to correct these and at the same time attempting to prevent further intervention by the Federal Courts.

Attached hereto and made a part hereof is a copy of the telegram of the Governor calling the Extra Session of the General Assembly to convene April 16, 1962.

This affidavit is made for use in the captioned case.

/s/ WILSON BROOKS

Sworn to and subscribed before
me this 13 day of April, 1962.

/s/ FRANCES H. WILLIAMS
Notary Public, Georgia State at Large
My Commission Expires Nov. 24, 1963

[SEAL]

[Handwritten notation—I certify I have served counsel of record with this affidavit by mailing a copy to each. This 15th April 1962. Morris B. Abram, counsel for plaintiff.]

[fol. 196]

(Western Union Telegram)

737P EST APR 5 62 AH549
A LLY746 LLZ29 LLZ29 NL PD ATLANTA GA 5
REP WILSON BROOKS
413 GRANT BLDG ATLA

YOUR PRESENCE IS URGENTLY NEEDED AT A
SPECIAL MEETING OF MEMBERS OF THE

GEORGIA GENERAL ASSEMBLY FROM THE 4TH AND 5TH CONGRESSIONAL DISTRICTS AT 10:00 A.M. ON TUESDAY, APRIL 10, IN THE STATE SENATE CHAMBER AT WHICH TIME I WILL DISCUSS WITH YOU A PROPOSAL TO MEET THE THREAT TO THE COUNTY UNIT SYSTEM POSED BY PENDING FEDERAL COURT LITIGATION. THIS PROPOSAL WILL BE PRESENTED BY ME AT AN EXTRAORDINARY LEGISLATIVE SESSION APRIL 16. LEGISLATION AT THIS SESSION WILL BE RESTRICTED TO PROPOSALS DEALING WITH THE COUNTY UNIT SYSTEM AND REAPPORTIONMENT
 ERNEST VANDIVER GOVERNOR.

[fol. 197]

(Western Union Telegram)

931P EST APR 5 62 AF575
 ALLY962 LLZ31 LLZ31 NL PD ATLANTA GA 5
 REP WILSON BROOKS
 413 GRANT BLDG ATLA

I AM CALLING THE GEORGIA GENERAL ASSEMBLY INTO EXTRAORDINARY SESSION APRIL 16 DUE TO THE THREAT TO THE COUNTY UNIT SYSTEM POSED BY PENDING FEDERAL COURT LITIGATION. YOUR PRESENCE IS URGENTLY NEEDED TO CONSIDER LEGISLATION OF AN EMERGENCY NATURE ON THE COUNTY UNIT SYSTEM AND REAPPORTIONMENT. I WILL DISCUSS WITH LEGISLATORS A PROPOSAL TO MEET THIS THREAT IN SPECIAL DISTRICT MEETINGS HERE AT THE STATE CAPITOL PRIOR TO APRIL 16. YOU WILL BE ADVISED IN A SUBSEQUENT MESSAGE OF THE DETAILS OF THE DISTRICT MEETING FOR YOUR AREA. LEGISLATION WILL BE RESTRICTED TO PROPOSALS DEALING WITH THE COUNTY UNIT SYSTEM AND REAPPORTIONMENT

S ERNEST VANDIVER GOVERNOR.

[fol. 198]

PLAINTIFFS' EXHIBIT 19

IN THE DISTRICT COURT OF THE UNITED STATES

FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

Civil Action No. 7872

JAMES O'HEAR SANDERS

VS.

JAMES H. GRAY ET AL.

GEORGIA

FULTON COUNTY

Personally appeared before me the undersigned officer duly authorized by law to administer oaths, LESLIE J. GAYLORD, who, after being sworn says:

Deponent's name is Leslie J. Gaylord, a resident of DeKalb County, Georgia, residing at 120 Glendale Avenue, Decatur, Georgia. Deponent has been a resident of the State of Georgia for forty-one years and is presently assistant professor of mathematics at Agnes Scott College, Decatur, Georgia, and has been on the faculty at Agnes Scott College since 1921, teaching there mathematics. Your deponent was educated as follows: Lake Erie College, Painesville, Ohio; University of Chicago, Chicago, Illinois, and University of Rome, Rome, Italy, and holds a BA degree and Master of Science, being in the specialty of mathematics.

Your deponent says, that she has examined the language used in Title 2, U.S.C.A. §2(a) with respect to the reapportionment of representatives in the National House of Representatives and has noted therein the use of the words "equal proportions." She states that said words to her [fol. 199] knowledge have no independent mathematical meaning but she has further examined the case of Shaw v. Atkins, 153 S.W. 2d 415 and comprehends the language

therein used where it is said by the Court: "Equal proportions—the priority list is obtained by dividing the population of each county by the geometric mean of successive numbers of representatives. The priority list obtained by the process shown in the ninth footnote (equal proportions) is made use of in the manner explained as pertaining to major fractions. The priority list and other data for use in the equal proportions method are shown in the tenth footnote."

With respect to the so-called "equal proportions" formula, your deponent says that said formula is not capable of producing an equal distribution or apportionment of representative seats insofar as it is applied to a situation in which a certain number of seats must be arbitrarily assigned without regard to population.

Your deponent says that the relative disparities and disproportions produced by the application of the "equal proportions" method are dependent perforce upon the following circumstances: (1) the total number of representatives to be distributed and (2) the number of that total to be distributed arbitrarily and without regard to population.

Your deponent says that the equal proportions method will produce the greatest disparities and the greatest discriminations when the pool of seats to be assigned is small and the number of seats to be arbitrarily assigned relative thereto is large. In the case of the National House of Representatives, your deponent points out that there are 435 seats to be assigned, of which, when Title 2, U.S.C.A. §2(a) was enacted, only 48 of said total were to be [fol. 200] assigned arbitrarily without regard to population, leaving a total of 387 to be allocated under the so-called formula of equal proportions. Thus, when said section of the U.S.C.A. was enacted, 89.0% of the total pool of seats to be allocated was to be assigned under the so-called formula of equal proportions. Even today, when there are 50 seats, applying the formula of equal proportions, of the total of 435 seats, 385 of them would be assigned according to the formula of equal proportions or 88.5% of the total.

Your deponent shows that if the so-called equal proportions formula were arbitrarily to be used in assigning the

distribution of seats in the Georgia House of Representatives, of which she knows there to be only 205 seats to be assigned amongst 159 counties, the so-called equal proportions formula would only apply to 46 seats and 159 seats would be assigned arbitrarily without regard to any proportions or population. By applying the equal proportions technique therefore to the problem of assigning seats in the Georgia House of Representatives, the equal proportions formula must necessarily create grave disparities of a far greater magnitude than would be present in applying the so-called formula in the case of the Federal House of Representatives.

In the use of such a formula as applied to the Georgia House of Representatives, for example, only 22.4% of the seats would be available (giving each of the 159 counties one seat) for assignment with regard to population. Under the governor's current proposal the seats available for assignment by population would be only 8.9%.

Your deponent further says that under the so-called equal proportions formula, if it were applicable, Fulton County would presently receive 17 seats in the Georgia House of Representatives.

[fol. 201] Your deponent understands that the Governor of the State of Georgia has proposed to the General Assembly in Extraordinary Session on April 16, 1962, that the number of seats in the lower house thereof would be increased by 20 seats, making a total of 225. Applying the so-called "equal proportions" formula to said number of seats and giving each of Georgia's 159 counties one seat arbitrarily and without regard to population, Fulton County would then be entitled to receive 22 seats.

Your deponent is informed that the Governor has proposed to the General Assembly in Extraordinary Session on April 16, 1962, that the so-called equal proportions formula be used by assigning arbitrarily and without regard to population, not just 159 seats, one to each of Georgia's 159 counties, but two seats arbitrarily to an additional 30 counties in the state and three seats arbitrarily to an additional 8 counties in the state. Under such proposal, there would be available for the application of the "equal proportions" formula, under the present compo-

tion of the House of Representatives of Georgia, no seats; but under the Governor's proposal, as your deponent understands it, there would be arbitrarily available for the application of the "equal proportions" formula but 20 seats to be placed in a pool to which the equal proportions formula would be applied.

Moreover, applying said "equal proportions" formula to said pool of 20 seats, Fulton County would be entitled to 14 of the total seats in the House of Representatives but your deponent understands that the Governor's proposal would only allocate to Fulton County, 12. Further, DeKalb County would have seven representatives, not six as the [Vol. 202] Governor has proposed. Thus, the proposal of the Governor does not even mathematically carry out the so-called limited requirements of the "equal proportions" as she understands he has proposed it.

Your deponent says that manifestly the equal proportions formula can produce a vast variety of results, depending upon the number of seats to be assigned and, of that number, the number to be assigned arbitrarily. Actually, the equal proportions formula, (which simply means that a priority list is obtained by dividing the population of each district by the geometric mean of successive numbers of representatives,) can never achieve equality amongst voters if the system is used to apply to the problem of voting as opposed to the problem of representation. Thus, the system is not applicable in any case where it is intended to achieve equalities of voting strength. Moreover, if the purpose of the mathematical exercise is to give or to afford citizens of Fulton County a relative equality of representation with the citizens of the least populous county in Georgia—Echols—it would be necessary (assuming Echols and every other county in Georgia to have one representative and ignoring fractions), that the lower House of Representatives in Georgia consist of 2102, of which number Fulton County would be required to have 297 seats in said House of Representatives.

Your deponent understands that the county unit system is based on the assumption that each county will be assigned unit votes twice the number of its representatives in the lower house of the Georgia General Assembly, and under

assumptions immediately above, the Fulton County unit [fol. 203] vote would be 594 and Echols' unit vote would still remain at 2.

The attached tables will show the discrimination against the County of Fulton applying the so-called "equal proportions" formula under the following variety of circumstances:

Table I assumes that no county will lose a representative and the House of Representatives remains at 205 seats.

Table II assumes that the lower house will remain at 205 and that each county will be arbitrarily assigned at least one seat.

Table III assumes that the lower house will be increased to 225 and each county is assigned arbitrarily one seat.

Table IV assumes that no county will lose a representative and the House is increased to 225 seats.

This affidavit is given for the purpose of being used as evidence in the above styled case.

/s/ LESLIE J. GAYLORD

Sworn to and subscribed before
me this 15 day of April, 1962

/s/ FRANCES H. WILLIAMS

Notary Public, Georgia State at Large
My Commission Expires Nov. 24, 1963

[Handwritten notation—I certify that I have served counsel of record with a copy of this affidavit by mailing same. This 15th of April 1962. Morris B. Abram, Attorney for Plaintiff.]

[fol. 204]

TABLE I

HOUSE OF 205 SEATS. NO CHANGE IN
PRESENT 1-2-3 APPORTIONMENT

Fulton County

Number of representatives	3
Population	556,326
Population per representative	185,442

Echols County

Number of representatives	1
Population	1876
Population per representative	1876

Ratio of Fulton County population per representative to Echols County population per representative

98.8

[fol. 205]

TABLE II

HOUSE OF 205 SEATS, 46 SEATS TO BE ASSIGNED
ON "EQUAL PROPORTIONS"

Fulton County

Number of representatives	17
Population	556,326
Population per representative	32,725

Echols County

Number of representatives	1
Population	1876
Population per representative	1876

Ratio of Fulton County population per representative to Echols County population per representative

17.4

[fol. 206]

TABLE III

HOUSE OF 225 SEATS, 66 SEATS TO BE ASSIGNED
ON "EQUAL PROPORTIONS"

<i>Fulton County</i>	
Number of representatives	22
Population	556,326
Population per representative	25,288
<i>Echols County</i>	
Number of representatives	1
Population	1876
Population per representative	1876
Ratio of Fulton County popu- lation per representative to Echols County population per representative	13.5

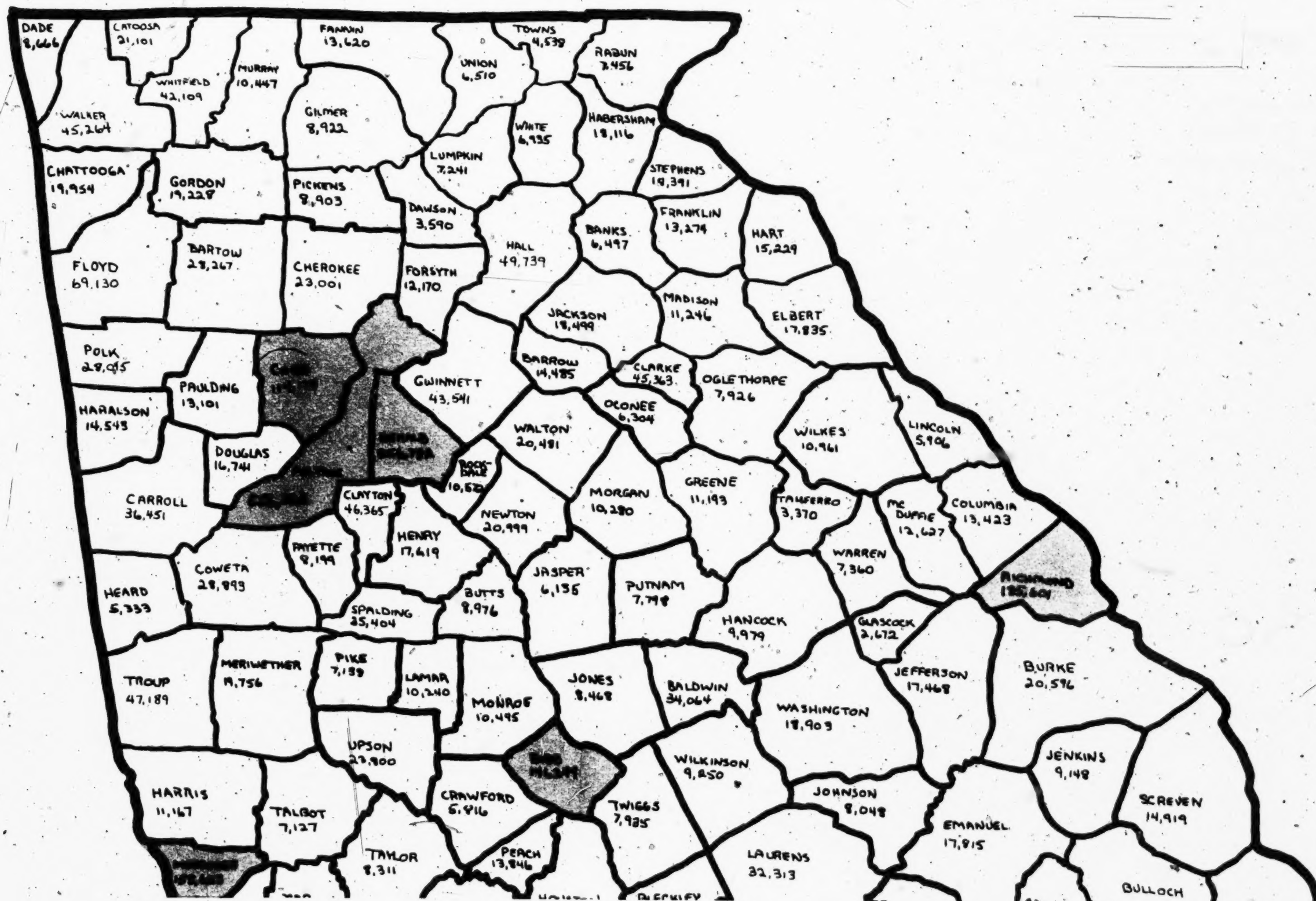
[fol. 207]

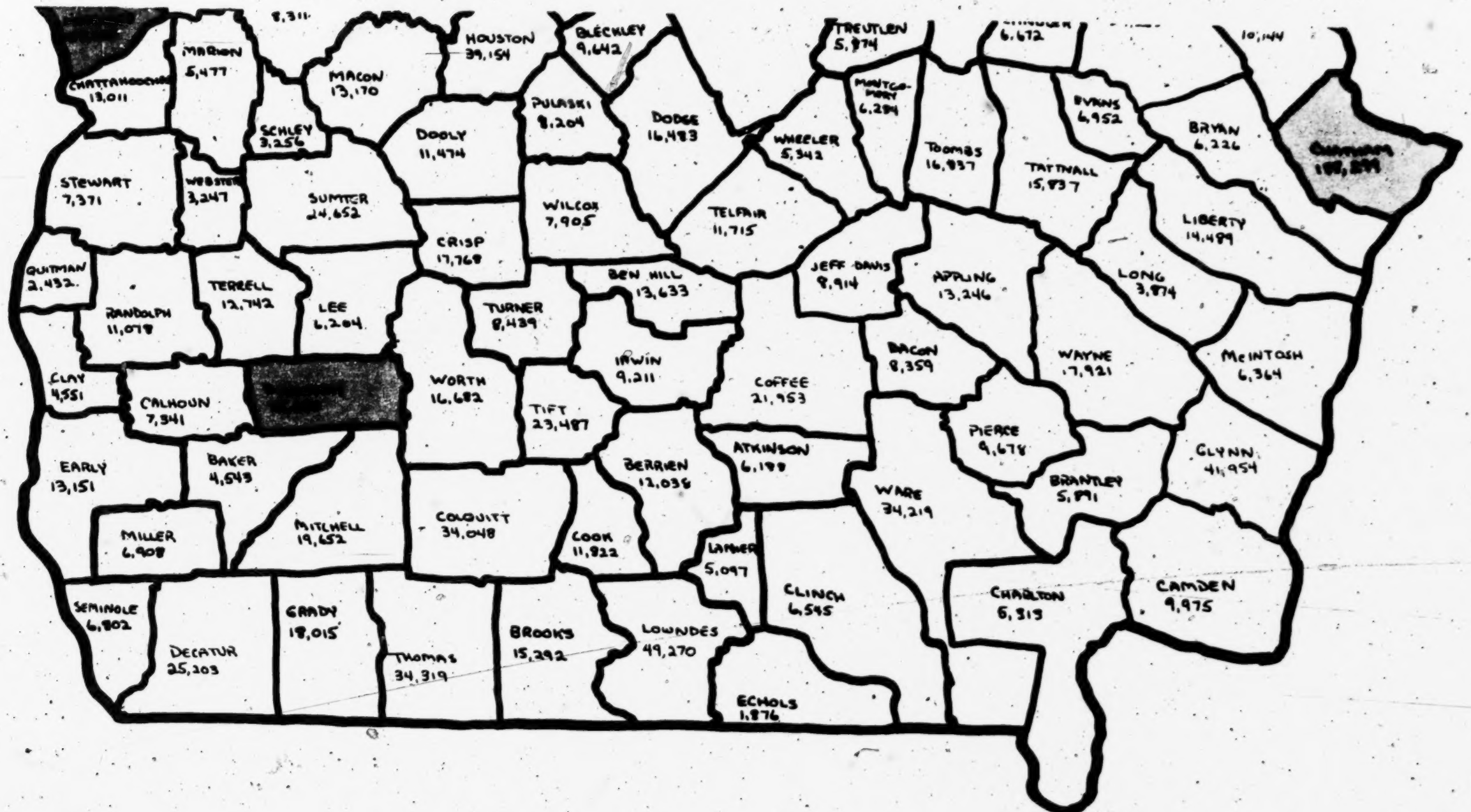
TABLE IV

HOUSE OF 225 SEATS, 1-2-3 FORMULA PLUS 20 SEATS
TO BE ASSIGNED ON "EQUAL PROPORTIONS"

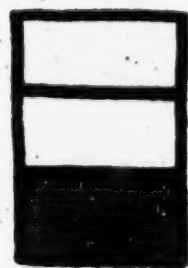
<i>Fulton County</i>	
Number of representatives	14
Population	556,326
Population per representative	39,738
<i>Echols County</i>	
Number of representatives	1
Population	1876
Population per representative	1876
Ratio of Fulton County popu- lation per representative to Echols County population per representative	21.2

GEORGIA - 1960





KEY:



2 UNIT
4 UNIT
6 UNIT

CONSOLIDATED RETURNS

General Election, November 8, 1960

U. S. SENATOR

RICHARD B. RUSSELL	576,140
Write-in votes total	355

U. S. REPRESENTATIVES

G. ELLIOTT HAGAN	1st Congressional District	53,749
J. L. PILCHER	2nd Congressional District	43,596
E. L. (TIC) FORRESTER ¹	3rd Congressional District	55,005
JOHN J. FLYNT ²	4th Congressional District	53,394
JAMES C. DAVIS ³	5th Congressional District	80,023
CARL VINSON	6th Congressional District	44,237
JOHN W. DAVIS (Dem.)	7th Congressional District	69,717
E. RALPH IVEY (Rep.)	7th Congressional District	24,285
IRIS FAIRCLOTH BLITCH ⁴	8th Congressional District	50,456
PHIL M. LANDRUM ⁵	9th Congressional District	57,549
ROBERT G. STEPHENS, JR. ⁶	10th Congressional District	41,679

¹ Republican Party (3rd Congressional District)	182
² Independent Party (4th Congressional District)	1
³ Write-in votes total (5th Congressional District)	272
⁴ Republican Party (8th Congressional District)	84
⁵ Write-in votes total (9th Congressional District)	2
⁶ Write-in votes total (10th Congressional District)	41

PRESIDENTIAL ELECTORS

NAMES OF DEMOCRATIC CANDIDATES FOR PRESIDENTIAL ELECTORS

STATE AT LARGE	S. Ernest Vandiver	458,638
	Peter Zack Geer	455,202
1st District	James L. Gillis	455,720
2nd District	James H. Gray	455,576
3rd District	Lamar Sizemore	455,378
4th District	David Arnold	455,484
5th District	Ivy Duggan	455,251
6th District	Tom Carr	455,099
7th District	J. Battle Hall	455,191
8th District	Robert E. Lee	455,241
9th District	Glenn W. Ellard	455,255
10th District	Charlie Baldwin	455,510
	Write-in votes total	

NAMES OF REPUBLICAN CANDIDATES FOR PRESIDENTIAL ELECTORS

STATE AT LARGE	Robert R. Snodgrass	274,472
	William B. Shartzer	273,346
1st District	James L. Sundy	273,080
2nd District	Russell E. Kaliher	272,992
3rd District	James M. Brophy	272,907
4th District	Paul Cobb	272,962
5th District	Charles A. Moye, Jr.	272,885
6th District	J. Marvin Elliott	272,968
7th District	C. Eugene Hughes	272,901
8th District	James M. Kent	273,041
9th District	Cecil G. Hartness	272,902
10th District	Eugene T. Gilbert	272,859
		239

[fol. 209]

DEPENDANTS' EXHIBIT 1

209

CONSTITUTIONAL AMENDMENTS

General Amendments voted on State-wide:

No. 1	For: 282,773	Against: 133,810	No. 11	For: 214,788	Against: 152,451
No. 2	For: 206,952	Against: 148,528	No. 12	For: 173,170	Against: 195,012
No. 3	For: 121,237	Against: 257,843	No. 13	For: 254,520	Against: 109,713
No. 4	For: 207,067	Against: 164,972	No. 14	For: 251,937	Against: 111,249
No. 5	For: 194,771	Against: 170,889	No. 15	For: 242,015	Against: 115,705
No. 6	For: 116,296	Against: 247,233	No. 16	For: 232,036	Against: 118,314
No. 7	For: 180,174	Against: 173,625	No. 17	For: 179,466	Against: 161,234
No. 8	For: 247,301	Against: 128,534	No. 18	For: 185,954	Against: 148,736
No. 9	For: 212,516	Against: 140,167	No. 19	For: 139,699	Against: 173,948
No. 10	For: 119,203	Against: 278,804			

CONSTITUTIONAL AMENDMENTS

Local Amendments voted on in affected areas:

The following local amendments were proclaimed by the Governor on November 18, 1960, as being ratified: Nos. 20, 25, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 41, 43, 44, 45, 46, 47, 48, 50, 51, 52, 55, 56, 57, 58, 59, 60, 62, 63, 64, 65, 68, 72, 73, 74, 75, 76, 77, 78, 79, 81, 83, 84, 85, 86 and 87; and the following local amendments were proclaimed by the Governor on November 18, 1960, as not having been ratified: Nos. 21, 22, 23, 24, 26, 40, 42, 49, 53, 54, 61, 66, 67, 69, 70, 71, 80 and 82.

SUPREME COURT JUSTICES

CARLTON MOBLEY	549,910
JOSEPH D. QUILLIAN	552,284
BENNING GRICE	547,997
Write-in votes total (Fulton County)	7

COURT OF APPEALS JUDGES

JOHN SAMMONS BELL	550,748
JULE W. FELTON	547,296
JOHN E. FRANKUM (Unexpired term)	545,460
JOHN E. FRANKUM	544,675
J. M. C. TOWNSEND	548,541
Write-in votes total (Fulton County)	12

JUDGES OF THE SUPERIOR COURTS

Alapaha Judicial Circuit	H. W. LOTT	546,806
Albany Judicial Circuit	CARL E. CROW	546,747
Augusta Judicial Circuit	F. FREDERICK KENNEDY	547,629
Blue Ridge Judicial Circuit	SAM P. BURTZ	546,788
Chattah'chee Judicial Circuit	HUBERT CALHOUN	546,628
Chattah'chee Judicial Circuit	J. R. THOMPSON	546,623
Cherokee Judicial Circuit	JEFFERSON L. DAVIS	546,692
Clayton Judicial Circuit	HAROLD R. BANKE	546,669
Cobb Judicial Circuit	JAMES T. MANNING	546,680
Cobb Judicial Circuit	ALBERT J. HENDERSON, JR.	546,794
Coweta Judicial Circuit	LAMAR KNIGHT	546,881
Dublin Judicial Circuit	HAROLD E. WARD	547,824
Eastern Judicial Circuit	DUNBAR HARRISON	549,460
Eastern Judicial Circuit	B. B. HEERY	549,323
Gwinnett Judicial Circuit	CHAS. C. PITTARD	547,744
Macon Judicial Circuit	HAL BELL	548,918
Mountain Judicial Circuit	LAMAR N. SMITH	546,607
Northern Judicial Circuit	CAREY SKELTON	546,627
Oconee Judicial Circuit	J. K. WHALEY	546,593
Ogeechee Judicial Circuit	WALTON USHER	546,556
Piedmont Judicial Circuit	RICHARD B. RUSSELL, III	546,767
Southwestern Judicial Circuit	T. O. MARSHALL	546,602
Stone Mtn. Judicial Circuit	H. FRANK GUESS	547,510
Stone Mtn. Judicial Circuit	H. O. HUBERT, JR.	546,771
Tifton Judicial Circuit	J. BOWIE GRAY	546,568
Toombs Judicial Circuit	EARLE NORMAN	546,515
Write-in votes (Piedmont Judicial Circuit)		78
Write-in votes (Fulton County)		8

SOLICITORS-GENERAL

Alapaha Judicial Circuit	VICKERS NEUGENT	543,702
Albany Judicial Circuit	MASTON O'NEAL	543,172
Atlanta Judicial Circuit	PAUL WEBB	547,701
Augusta Judicial Circuit	GEORGE HAINS	543,550
Blue Ridge Judicial Circuit	JESS H. WATSON	543,279
Brunswick Judicial Circuit	JACK W. BALLENGER	543,231
Chattah'chee Judicial Circuit	JOHN H. LAND	543,185
Cherokee Judicial Circuit	TOM POPE	543,243
Clayton Judicial Circuit	D. M. JOHNSON	543,172
Cobb Judicial Circuit	LUTHER C. HAMES, JR.	543,165
Coweta Judicial Circuit	WRIGHT LIPFORD	543,166
Dublin Judicial Circuit	W. W. LARSEN, JR.	543,140
Eastern Judicial Circuit	ANDREW JOE RYAN, JR.	542,089
Flint Judicial Circuit	HUGH DORSEY SOSEBEE	543,113
Griffin Judicial Circuit	ANDREW J. WHALEN, JR.	543,152
Gwinnett Judicial Circuit	JACK HOLLAND	543,149
Lookout Mtn. Judicial Circuit	EARL B. (BILL) SELF	537,291
Macon Judicial Circuit	WILLIAM M. WEST	544,616
Middle Judicial Circuit	WALTER C. McMILLAN, JR.	543,174
Mountain Judicial Circuit	BEN F. CARR	543,154
Northern Judicial Circuit	CLETE D. JOHNSON	543,136
Ocmulgee Judicial Circuit	GEORGE D. LAWRENCE	543,120
Oconee Judicial Circuit	ALBERT D. MULLIS	543,147
Ogeechee Judicial Circuit	COHEN ANDERSON	543,174
Pataula Judicial Circuit	JOE M. RAY	543,125
Piedmont Judicial Circuit	ALFRED A. QUILLIAN	543,148
Rome Judicial Circuit	CHASTINE PARKER	543,159
Southern Judicial Circuit	BOB HUMPHREYS	543,171
Southwestern Judicial Circuit	STEPHEN PACE, JR.	543,135
Stone Mtn. Judicial Circuit	RICHARD BELL	545,432
Tifton Judicial Circuit	W. J. FOREHAND	543,121
Toombs Judicial Circuit	KENNETH E. GOOLSBY	543,167
Western Judicial Circuit	D. MARSHALL POLLOCK	543,119
Write-in votes total (Atlanta Judicial Circuit)		8
Write-in votes total (Piedmont Judicial Circuit)		1

[fol. 212]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
Civil Action No. 7872

JAMES O'HEAR SANDERS, Plaintiff,

v.

JAMES H. GRAY, as Chairman of the Georgia State Democratic Executive Committee; GEORGE D. STEWART, as Secretary of the Georgia State Democratic Executive Committee; THE GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE; THE GEORGIA STATE DEMOCRATIC PARTY; and BEN W. FORTSON, JR., as Secretary of State of the State of Georgia, Defendants.

OPINION—April 28, 1962

Before Tuttle and Bell, Circuit Judges, Hopper, District Judge.

Bell, Circuit Judge:

Plaintiff seeks declaratory and injunctive relief alleging deprivation of federal constitutional rights. The prayer seeks to restrain the Georgia State Democratic Party and the Chairman and Secretary of the Georgia State Democratic Executive Committee in their representative capacities, and their successors in office, from conducting elections under the County Unit System; from tabulating and consolidating ballots cast in the democratic primary election to be held on September 12, 1962, and in any other primary election conducted by that party on the basis of the County [fol. 213] Unit System; from selecting any nominee on the basis of ballots cast in any primary election held on the County Unit System; from publishing or certifying the nomination of any candidate for United States Senator, Governor, Lieutenant Governor, Justice of the Supreme Court, Judge of the Court of Appeals, Secretary of State, Attorney General, Comptroller General, Commissioner of Labor, and State Treasurer on the basis of the County Unit System; and from giving force and effect to the County

Unit System as it is established under the Neill Primary Act, §§ 34-3212 through 34-3218 (Ga. Code Annot. Supp.), Georgia Laws, 1917, p. 183, et seq., Ga. Laws, 1950, p. 79 et seq. The prayer is also to restrain the Secretary of State of Georgia, and his successors in office, from certifying to the several ordinaries of the State of Georgia the names of any candidates for nomination to statewide offices who shall have been nominated in any primary held by the Democratic Party under the County Unit System; and from furnishing to the several ordinaries official ballots and election supplies whereon nomination under the County Unit System is recognized. Lastly, plaintiff seeks judgment to the effect that the Neill Primary Act is void and unconstitutional insofar as it provides for the nomination by the defendant party of any candidates for the named offices under the County Unit System.

Plaintiff is an elector within the meaning of Article II, § I, Paragraphs I through IV of the Constitution of the State of Georgia of 1945, Ga. Code §§ 2-701 through 2-704. He is qualified to vote in primary and general elections in Fulton County, is a member of the Democratic Party of Georgia, intends to vote in the democratic primary election to be held within the State of Georgia in 1962 and intends [Vol. 214] to support the nominees of such primary in the general election to be held on the Tuesday after the first Monday in November, 1962.

Defendant Democratic Executive Committee, an unincorporated association, is the governing body of the defendant Democratic Party of Georgia, also an unincorporated association, and which is composed of many thousands of persons residing throughout the State of Georgia. Defendants Gray and Stewart are Chairman and Secretary, respectively, of the Executive Committee. Defendant Fortson is Secretary of State of the State of Georgia.

¹ The facts in this memorandum opinion are to be considered as findings of fact within the meaning of Rule 52(a), Fed. R. Civ. P., cf. *Myles v. Quinn Menhaden Fisheries, Inc.*, No. 19256, 5 Cir., 1962, F.2d and are based on the verified pleadings, and the evidence submitted on the hearing, together with liberal use of our right to take judicial notice of matters of common knowledge and public concern. 31 C.J.S., Evidence, §§ 6-27, 32, 37, 40-43, 51, 58-61, 97, 98.

Defendant Committee, as the governing body of defendant party, intends to supervise the holding of the primary election, to tabulate and consolidate the ballots cast therein and to certify to defendant Secretary of State the names of persons determined by that committee to have been nominated in the primary election, all as provided by the statutes of Georgia. The Secretary of State, pursuant to statute, will furnish to the several ordinaries of the State of Georgia official ballots and election supplies and will certify to the ordinaries the names of the candidates nominated in the primary. The ordinaries will in turn submit the names of the candidates to the electors of the State of Georgia for their choice in the general election in November.

Plaintiff contends in his suit that the County Unit System is arbitrary and discriminatory to the extent that it is a denial to him of equal protection of the laws within the meaning of the Fourteenth Amendment to the Federal [fol. 215] Constitution in that Fulton County where he resides, the largest county in Georgia, is allotted only six unit votes under the statute which in total allows six unit votes each for the eight largest counties by population in Georgia, four unit votes for each of the thirty next largest by population and two each for the remaining one hundred twenty one counties. According to the 1960 United States census Fulton County had a population of 556,326 while Georgia had a total population according to the same source of 3,943,116, Fulton County, thus having 14.11 percent of the total population of Georgia but only 1.46 percent of the total of 410 county unit votes. On the other hand, the least populous county in Georgia, Echols, had a population according to the 1960 census of 1876 or .05 percent of the population in the state, and is accorded two units or .48 percent of the total units. Thus the discrimination runs against Fulton County on an approximate ten to one ratio based on population and in favor of Echols County on an approximate ten to one ratio. The discriminatory ratio under the County Unit System runs, based on the 1960 census, between these ranges but in every instance against Fulton County. The Unit System also accords to the candidate receiving the plurality of votes in a county the entire unit vote thus reversing the votes of those voting for

another candidate just as is the case under the Federal Electoral College System.

Plaintiff asserts, in addition to his Fourteenth Amendment claim, that the System violates the Seventeenth Amendment which provides that the Senators from each state shall be elected by the people thereof.

[fol. 216] He alleges that he is without adequate remedy at law in view of the holding of the Supreme Court of Georgia in the case of *Cox v. Peters*, 1951, 208 Ga. 498, 67 S.E.2d 579, appeal dismissed, 342 U.S. 936 (1952), that an action at law for damages will not lie in favor of one aggrieved by reason of the application of the County Unit System. Jurisdiction and three-judge status is based on Title 28, USCA, §§ 1343, 2201-2202, 2281 and 42 USCA, § 1983.

History of the County Unit System

The County Unit System throughout its long use in primary elections in Georgia, first by party rule and later by statute, has always been based on the formula obtaining for apportionment of the House of Representatives.² Thus we look first to the history of apportionment in the House of Representatives of Georgia. Eight counties were established under the first state constitution, 1777, from which

² We are not aware that the statutory primary election has ever been used by any party other than the Democratic Party although it is available to all. The County Unit System is compulsory to all parties holding primary elections.

The Republican party of Georgia, although until this year it has apparently not actually nominated any one for statewide office during this century, uses the convention system for nominating for state office in presidential election years. The convention also selects a State Central Committee which has the power to nominate candidates between quadrennial conventions, which are held during presidential election years. Delegates are elected from each county at mass meetings to the state convention. The mass meeting must meet statutory requirements, Georgia Code, §§ 34-3401, 3402. The number of delegates per county to the state convention is, except for extra delegates given to counties voting Republican in the preceding election, in ratio to the number of Republican votes cast in the county in the last general election. See Gosnell and Anderson, *The Government and Administration of Georgia*, 1956, p. 37.

representatives were to be elected annually by the voters; Liberty County electing fourteen representatives, Glynn [fol. 217] and Camden one each, the other counties ten each, with the Port and Town of Savannah to have four to represent their trade and the Port and Town of Sunbury to have two to represent their trade. Glynn, Camden and all counties thereafter laid out were to have one representative provided there were ten electors in the county, then two representatives for thirty electors, three for forty, four for fifty, six for eighty, and ten for a hundred or more electors. After reaching a hundred electors a county would be entitled to two executive councilors among the number of representatives. These representatives were to meet and from their number select two from each county to constitute a Council and to elect a governor. The remaining representatives were to constitute the "house of assembly." Georgia Const. of 1777, Articles II-V; McElreath on the Constitution of Georgia (1911), pp. 230-231; *South v. Peters*, N.D. Ga., 1950; 89 F.Supp. 672.³ It was under this constitution that Georgia ratified the Federal Constitution and entered the Union on January 2, 1788.

The Constitution of 1789 was then adopted. It created a general assembly consisting of a senate and house of representatives. Each county was to have one member of the Senate with terms of three years. The Members of the House were elected annually from each of the then existing eleven counties with Camden, Glynn, Effingham, Washington, Greene, and Franklin having two each, Burke, [fol. 218] Liberty, and Richmond having four each, and Chatham and Wilkes five each, making a total of thirty four. A governor was to be elected by the Senate each two years from three persons nominated by the House of Representatives. Georgia Constitution of 1789, Article I, §§ 1-6, Article II, § 2; McElreath, pp. 242, 243, 245; *South v. Peters*, supra.

³ The right to vote under this Constitution was restricted to white males who owned property of a value of ten pounds, or who had a mechanic's trade and anyone who failed to vote was fined five pounds. Arts. IX, XII.

Under the Constitution of 1798 the principle was declared that representation in the House should thereafter be according to population on an enumeration to be made each seven years, and on the basis that population of 3,000 would entitle a county to two members of the House, 7,000 to three members, and 12,000 or over to four members, with each county to have at least one and not more than four. Constitution of 1798, Article I, § 7; McElreath, p. 252. As was said in *South v. Peters*, this plan was an evident reflection of Article I, § 2, cl. 3 of the Federal Constitution fixing the apportionment of representatives in Congress among the states.

The governor was to be elected by the General Assembly on joint ballot, and there were popular elections only by counties. Article II, § 2; McElreath, p. 259. In 1823 the Constitution was amended to provide, beginning in 1825, that the governor should be elected each two years by persons qualified to vote for members of the General Assembly, and if no candidate had a majority of the votes the General Assembly would elect the governor by joint ballot. McElreath, p. 273.

By an amendment proposed and assented to in 1842 and confirmed in 1843, forty seven senatorial districts were created and the number of representatives was fixed at 130, each county to have one, with no county to have more than two; the 37 counties having the greatest population were [fol. 219] to have two each, with reapportionment to be made after each census. McElreath, p. 277. The same basis of House apportionment was carried forward, after secession, in the Georgia Confederate Constitution, Const. of 1861, Article II, § 3, par. 1; McElreath, p. 286, and in the Constitution of 1865, adopted upon the cessation of hostilities and during the Presidential Reconstruction of Georgia. Const. of 1865, Article II, § III, par. 1; McElreath, p. 304.

The Constitution of 1868 was adopted during the second or Congressional Reconstruction and as a prerequisite to the end of the occupation of Georgia by Federal troops.

* Saye, A Constitutional History of Georgia, pp. 256-272.

It provided the three-two-one formula of apportionment in the House, which is still in use in Georgia. The House was to consist of 175 members, apportioned three each to the six largest counties, two each to the thirty one next largest, and one each to the remaining counties. The apportionment might be changed after each federal census but the total membership was not to be increased. Constitution of 1868, Article III, § 3, par. one; McElreath, p. 327.

Fulton had the smallest population of any of the six largest counties, Chatham, Richmond, Burke, Bibb and Houston being larger in that order. They each had 1.7 percent of the House representation. Fulton had only 1.36 percent of the total population while, for example, Chatham had 2.9 percent and Richmond 2.0 percent of the population. Compendium, 9th Census of the U.S. Fulton had an equality ratio based on population of 121 percent. Stated differently, Fulton had 121 percent of the number of representatives while being entitled to 100 percent on a pure population basis. On the other hand, Chatham County had [fol. 220] an equality ratio of only 59 percent while that of Richmond was 85 percent.

The Constitution of 1877 was next adopted and it was followed by the Constitution of 1945. The apportionment formula was changed by the Constitution of 1877 to the extent that it reduced the number of two representative counties from thirty one to twenty six. Changes in the total number of representatives were made from time to time because of the creation of new counties and the total was 189 at the time of the adoption of the Neill Primary Act in 1917. The situation with respect to the creation of new counties stabilized and the last county to be created in Georgia was Peach in 1924, making a total of 161 counties. Since then two counties have been abolished by merger with Fulton (Milton and Campbell) but Fulton did not get their representation. Since 1920 the formula has been three representatives on the basis of population for the eight largest counties, two for the thirty next largest and one each for the balance. Reapportionment within the limits of the formula on population was mandatory after each Federal census and has been effected to date. The Con-

stitution of 1877, Article III, § 3, pars. 1, 2; McElreath, p. 358.

We turn now to the history of primary elections held by the Democratic Party in Georgia. Prior to the Civil War the predominant parties in Georgia were the Democrats and Whigs. The Democrats took control when the war ended but were soon ousted by the Republicans. A Republican governor served from 1868 until the end of 1871 when the Democrats regained control to remain the dominant party at all times since then. The most serious competition to the Democrats was the Populist movement in the 1890's. This party elected five senators and forty-seven representatives [fol. 221] to the General Assembly in 1894 and polled 44½ percent of the total vote cast. Coulter, *Georgia, A Short History* (1961), pp. 362-380, 392-396. See also Arnett, *Populist Movement in Georgia* (1922).

Dr. Saye, *supra*, pp. 356-358, succinctly sets out the history of party nominating methods in Georgia and the events leading up to the Neill Primary Act:

"In the election of 1918, Governor Dorsey was unopposed for reelection, . . .

"The first session of the General Assembly during Dorsey's administration passed the Neill Primary Act, destined to be of far-reaching significance in the future political history of the State. Beginning with California in 1866, several states introduced legal regulations of primary elections soon after the Civil War, but in Georgia primaries continued to be managed by political parties with little legal restraint. An act of 1887 prohibited the giving or furnishing of liquor within a certain distance of polling places on election days and gave legal recognition to the existence of primaries, and an act of 1891 proscribed several regulations, but left their use optional with the political parties. Several laws on the subject were enacted during the first decade of the twentieth century, including an act of 1904 making it a misdemeanor to buy votes and an act of 1908 requiring that primaries for the nomination of State officers be held on the same date in all counties. Yet primary elections continued to be governed largely by party custom and rules.

"Prior to 1886 diverse methods had been used to select delegates to State conventions of political parties—mass meetings in county courthouses, meetings in militia districts to select delegates to county meetings, or appointment by county executive committees. Relatively few delegates had been chosen by actual vote of the people. In that year, Henry Grady, managing Gordon's campaign for Governor, effectively offset the advantage that Augustus O. Bacon held in the party organization by an appeal to the people to revolt [fol. 222] against the politicians and elect their own delegates to the Democratic State Convention. In 1890 the State Democratic Executive Committee recommended the use of primaries in selecting delegates to the State Convention, and eight years later the Democratic Party required this procedure. Delegates from each county to the State Convention of the Party were to be chosen by the county executive committees from the friends of the gubernatorial candidate receiving the largest popular vote in the county, and they were required to vote for State officers in the convention according to the vote of the people in their county.

"The county unit rule, under which the number of votes of a county in the State Convention was determined by its representation in the House of Representatives, was used from the very beginning of primaries by the Democratic Party, except in 1908, as noted above. . . ."⁵

The movement to make statutory what had been voluntary was given additional impetus by the adoption of the Seventeenth Amendment to the Federal Constitution in 1913 requiring United States Senators to be elected by

⁵ The main issue in the 1908 Democratic primary campaign was the effort of Hoke Smith to reform the "Undemocratic County Unit System whereby some country dwellers were given representation fifty times greater than that held by people living in large cities." The primary was held on a popular vote basis and Smith was defeated by Joseph M. Brown, who with Thomas E. Watson, supported the Unit System. Coulter, *supra*, p. 399.

the people instead of by the state legislature as had been the practice. And with the adoption of the Primary Act, for the Democratic Party at least so long as it is used, the direct primary displaced the county mass meeting or caucus followed by the state convention as a method of choosing party candidates for the general election, and county units displaced county delegates.*

[fol. 223] Based on the 1910 census, Fulton was the largest county when the Act was adopted in 1917 and the equality ratio for it under the Unit System, tied as it was to apportionment, had decreased from an advantage of 121 percent in 1868 over 100 to a disadvantage of 23.5 percent to 100.

After the primary is held, delegates are selected on the county unit basis from each county to attend the state convention where a platform is adopted, the votes canvassed and the names of the candidates winning the primary are ratified and certified to the Secretary of State for entry in the general election.

Under the Unit System candidates for governor and United States senator are required to receive a majority of the votes cast to secure the respective nominations out of the total of 410 county unit votes (two for each member of the House of Representatives). In the event of a tie the candidate with the largest popular vote becomes the nominee. A second or run off primary is held if no candidate has the majority. A plurality is sufficient as to the other offices to which the County Unit System applies.

The County Unit System as embraced in the Neill Primary Act is statutory only and a concerted effort was made in 1950 and again in 1952 to amend the Constitution to include it. The amendment was defeated in the 1950 general election on a popular vote basis 164,377 to 134,290, but the amendment would have carried 230 to 183 on a county unit basis. There were 309,170 votes against it and

* For other histories of Georgia political convention methods and the County Unit System see Coulter, *supra*; Gosnell and Anderson, *supra*; and Rigdon, *Georgia's County Unit System* (1961), pp. 23-27; see also *Turman v. Duckworth*, *infra*, and *South v. Peters*, *supra*.

279,882 for it in 1952 but the county unit vote would have been 264 votes for and 146 against. Rigdon, *supra*, pp. 36, 39.

[fol. 224]

*Previous Litigation Concerning the
County Unit System*

The validity of the County Unit System was first challenged in the case of *Cook v. Fortson*, N.D.Ga., 1946, 68 F.Supp. 624, where an effort was made to have the county unit rule and the statutes permitting its use declared unconstitutional, and to enjoin its use in determining the democratic nominee for Congress for the Fifth District of Georgia. The winner received a majority of the county unit vote but another candidate received a majority of the popular vote. Injunctive relief was denied on the basis of *Colegrove v. Green*, 1946, 328 U.S. 549, 66 S.Ct. 1198, 90 L.Ed. 1432, leaving the inequality complained of for consideration by the State Legislature or by the Congress under Article I, § 4 of the Federal Constitution. The court doubted that the county unit rule could be said to be imposed on a congressional primary by the state at all so as to bring the Fourteenth Amendment into operation since the statute, § 34-3217, provides that it shall not be construed to require any definite unit of election of candidates for primary nomination for Congress. If imposed it is done by action of the Democratic Committee for the Congressional District and not by statute, and this was expressly stated in the state party rules. The court said that at any rate the State Democratic Executive Committee had in effect cancelled the primary by certifying both candidates to the Secretary of State for inclusion on the general election ballot where all Democrats would be free to vote their choice on a popular vote basis.

In *Turman v. Duckworth*, N.D.Ga., 1946, 68 F.Supp. 744, plaintiffs challenged the use of the County Unit System in [fol. 225] the statewide gubernatorial primary. One candidate received a plurality of the popular vote but the winner received a majority of the unit votes. An interlocutory injunction was denied. The court noted that plaintiff had

not moved to assert the invalidity of the unit system before the Executive Committee set the primary, and before it was too late to have another primary or even a convention nomination. The court stated that the power and duty of the court to act is plain where a criminal statute about a political matter is involved, *In Re Yarbrough*, 1884, 110 U.S. 651, 45 S.Ct. 152, 28 L.Ed. 274, and *United States v. Classic*, 1941, 313 U.S. 299, 61 S.Ct. 1031, 85 L.Ed. 1368, or where there is involved a statutory right of action for damages; as in *Nixon v. Herndon*, 1927, 273 U.S. 536, 47 S.Ct. 446, 71 L.Ed. 759; *Smith v. Allwright*, 1944, 321 U.S. 649, 64 S.Ct. 757, 88 L.Ed. 987, and *King v. Chapman*, 5 Cir., 1946, 154 F.2d 460, but denied relief on the basis of *Colegrove*, *supra*. The court then made an additional statement for use in considering the merits in the event of appeal, and held that it had not been shown that the State of Georgia had deprived plaintiffs of the equal protection of the laws, recognizing however the primary as state action within the meaning of the Fourteenth Amendment. *King v. Chapman*, *supra*. It was pointed out that neither the state nor federal government had ever sought or demanded that voters should have equal voting influence, referring to the electoral college under which there have been presidents who did not receive a majority of the popular votes, and to the fact that the great political parties in their state and national organizations have based representation in the nominating conventions on the legislative strength of the states or counties represented. The court recognized the inequality between the less populated county [fol. 226] ties and Fulton County in representation in the legislature, and by consequence in applying the county unit rule to a primary, but stated that the remedy was through changes in the law rather than by appeals to courts of equity. It is a fair statement to say that the *ratio decidendi* of this case, like *Cook* is that the decision of the court was controlled by the *Colegrove* case involving congressional reapportionment in Illinois.

Both the *Cook* case and the *Turman* case were dismissed on appeal to the Supreme Court, with the authority cited being a case on mootness. Justices Black and Murphy were of the opinion that probable jurisdiction should be noted.

with Justice Rutledge being of the opinion that the question of jurisdiction should be postponed until a hearing on the merits. 329 U.S. 675, 1945, 67 S.Ct. 21, 91 L.Ed. 596 (October 28, 1946).

Another suit was instituted in 1950, this time prior to the primary, challenging the unit system and it was dismissed by the District Court. *South v. Peters*, 89 F.Supp. 672 (N.D.Ga., 1950), Judge Andrews dissenting. The Supreme Court affirmed per curiam, saying "Federal courts consistently refuse to exercise their equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions;" citing *McDougall v. Green*, 1948, 335 U.S. 281, 69 S.Ct. 1, 93 L.Ed. 31; *Colegrove*, supra; *Wood v. Brown*, 1932, 287 U.S. 1, 53 S.Ct. 1, 77 L.Ed. 313; and *Johnson v. Stevenson*, 5 Cir., 1948, 170 F.2d 108. *South v. Peters*, 1950, 339 U.S. 276, 70 S.Ct. 641, 94 L.Ed. 834. Justices Douglas and Black dissented from the dismissal on the grounds that the right to vote in a primary where the discrimination is [fol. 227] based on race, creed or color was held in *Nixon v. Herndon*, supra, to be covered by the equal protection clause of the Fourteenth Amendment, and the right to vote under such circumstances is protected by the Fifteenth Amendment. *Smith v. Allright*, supra, and *United States v. Classic*, supra. They thought the evidence regarding the County Unit System indicated equally invidious discrimination. The County Unit System would fall under the equal protection clause, and by reason of violating Article I, § 2 of the Constitution providing that members of the House of Representatives shall be chosen by the people (not here involved) and the Seventeenth Amendment providing that senators shall be elected by the people. They set out their view of what the rule should be and it turned out to be the forerunner of things to come. *Baker v. Carr*, Supreme Court, No. 6, October Term, 1961 (decided March 26, 1962). It was that "the only tenable premise under the Fourteenth, Fifteenth, and Seventeenth Amendments is that where nominations are made in primary elections, there shall be no inequality in voting power by reason of race, creed, color or other invidious discrimination."

In *Cox v. Peters*, supra, suit was brought for damages under 8 U.S.C.A. § 43 against Georgia election officials, alleging that a voter in the 1950 gubernatorial primary had been denied full enjoyment of his right to vote by reason of the County Unit System. The Georgia Supreme Court affirmed a dismissal of the suit, saying that the right to vote in a gubernatorial primary was not derived from the United States Constitution, and that the Georgia constitutional and statutory provisions asserted were applicable only to elections and that the primary was not the equivalent of an election, but only a substitute for a party convention. The United States Supreme Court dismissed for want of a substantial federal question, Justices Black and Douglas dissenting. *Cox v. Peters*, 1952, 342 U.S. 936, 72 S.Ct. 557, 96 L.Ed. 697.

A fourth attempt failed in 1958 when plaintiff was unsuccessful in obtaining the appointment of a three-judge court to consider the question. *Hartsfield v. Sloan*, leave to file petition for writ of mandamus denied, five to four, 357 U.S. 916 (1958).⁷

Jurisdiction, Justiciability, Standing and the Question Presented

A calm in litigation ensued thereafter as to the County Unit System while so-called reapportionment litigation was taking place in other states and some at least was pending before the Supreme Court. *Baker v. Carr*, supra. The instant litigation was filed shortly after the announcement of the decision in that case, and on the same day. A three-judge court was duly constituted and the matter came on promptly for hearing on the application for interlocutory injunction.

That case involved the apportionment of the Tennessee State Legislature. The court held that the District Court possessed jurisdiction of the subject matter, and that a justiciable cause of action was stated upon which the appel-

⁷ What has been heretofore stated was prepared before the hearing and before the General Assembly amended the Neill Primary Act, as will be hereinafter discussed. This was done in order to expedite a decision in a matter of such public importance.

lants, residents and voters of Tennessee claiming arbitrary and capricious state action offensive to the Fourteenth Amendment, had standing to maintain the suit. The rationale of that decision encompasses the cause of action here. We, accordingly, take jurisdiction and also hold that plaintiff has standing to maintain the suit and that the complaint sets out a justiciable issue.

In doing so, we, of course, resolve in favor of the plaintiff the question whether the Fourteenth Amendment pro-[fol. 229] tection extends to alleged deprivation of equal protection occurring in a Primary, as distinguished from a General election.

Much has been said in briefs and oral argument as to the place which the Primary in the State of Georgia has traditionally played in the election process. It is a fact known to all that the Democratic candidate has, without exception, at least during the present century, been the choice of the voters at the General election. On the other hand, it is pointed out that at least with respect to the office of Governor, a candidate has been nominated by the Republican party to participate in the General election in November of this year. Our conclusion that the protection of the Fourteenth Amendment extends to invidious discriminations if they exist in a party primary in Georgia in no way depends upon the degree to which the Democratic party primary is tantamount to the final election. It is based rather on prior decisions of the Court of Appeals for the Fifth Circuit, where it has been held that the conduct of a Primary election in Georgia is such an essential part in the total election process, its conduct and management is so closely supervised by State law and the effect to be given it is so clearly determined by statute that the action of the party in the conduct of its primary constitutes state action within the contemplation of the Fourteenth Amendment to the Constitution (*Chapman v. King*, 5 Cir., 154 F. [fol. 230] 2d 460).^{*} Touching on this matter Judge Sibley's opinion said:

^{*} As pointed out in the opinion written by Judge Sibley for the Court in *Chapman v. King*, supra:

"... The State collaborates in these ways: It prohibits anyone to participate in any primary or convention of any political

"We think these provisions show that the State, through the managers it requires, collaborates in the conduct of the primary, and puts its power behind the rules of the party. It adopts the primary as a part of the public election machinery." *Chapman v. King*, supra, p. 464.

See also *Smith v. Allright*, 321 U.S. 649, and *United States v. Classic*, 313 U.S. 209.

The remaining questions presented are but two: Does the County Unit System as set out in the Neill Primary Act, amended, violate the right of plaintiff to equal protection of the laws under the Fourteenth Amendment or his right to vote for a United States senator under the Seventeenth Amendment. This latter right would reach the unit system

party who is not a qualified voter. Georgia Code §2-608, Constitution, Art. II [since repealed] Sec. I, Par. 8. The State furnishes its list of registered voters and these voters alone are declared entitled to vote in primaries as well as in general elections. Georgia Code, §34-405. And the State registrars are required to be at the court house during the voting hours of the primary as fixed by law §34-2001a, to make corrections in the list [since repealed] §34-411 (Supplement). The State requires the party to select election managers, and requires each manager to take an oath that he will fairly and impartially and honestly conduct the election according to the provisions of law. §34-3201. If a voter is challenged, they are required to administer to him an oath that he is duly qualified to vote 'according to the rules of the party, and according to the election laws of this State.' §34-3202. All the laws in reference to the qualification of voters and their registration are applied to primaries; and 'No person who is not a duly qualified and registered voter according to law' and who is not also duly qualified in accordance with the rules and regulations of the party holding the same, shall be entitled to vote at any such primary election' §34-3218. If the challenged voter swears falsely, the State will punish him. §34-9925. No one but a sworn manager can have any part in receiving or counting the votes. §34-3205. The managers must turn over tally sheets, lists of voters, ballots and other election papers to the Clerk of the Superior Court to be kept under seal until the next grand jury meets if no contest is filed. §34-3207. The managers are indictable for violation of their duty. §§34-9922, 34-9923. Generally all penal laws touching elections are extended to primaries, §34-9933, Supplement; and §34-9907."

only as to the primary election for the office of United States senator, while the former would reach it as to all statewide offices. A subsidiary question of prime, even overriding importance, is the test to be applied to determine violation, and the factors to be considered in making the test.

[fol. 231]

The Test to Be Applied

It must be borne in mind that the hearing just held is a hearing for a temporary injunction. Such a hearing differs very largely from a final hearing in equity on the merits of a case in that a plaintiff may be entitled to immediate relief where time is of the essence of the controversy, even before the parties are able to fully develop their case on the merits or before the trial court is able adequately to consider and make the proper judicial determination of all of the legal questions that arise. This case is an excellent illustration of the need for distinguishing between temporary and permanent relief. We do not doubt that the Fourteenth Amendment applies, and we proceed on that basis. We think the Court by its opinion in *Baker v. Carr* has now adopted the following test stated by Mr. Justice Douglas in *South v. Peters*, *supra*:

"Where nominations are made in primary elections, there shall be no inequality in voting power by reason of race, creed, color, or other invidious discrimination."⁹

⁹ Webster's International Dictionary gives the following definition for "invidious":

"1. Tending to excite odium, ill will, or envy; likely to give offense; esp., unjustly and irritatingly discriminating; as invidious distinctions."

The same dictionary gives the following definition for "discrimination":

"1. Act of discriminating, or state of being discriminated."

Referring to the definition of "discriminate" in the same dictionary, we find the following definition:

"1. Having the difference marked, distinguished by certain tokens; distinct."

[fol. 232] Having applied the equal protection clause of the Fourteenth Amendment to the rights of plaintiff in this suit, and having set aside for the purpose of this hearing and decision the other points raised by all parties, we apply the test of invidious discrimination. We need not apply it of course to the "time honored" system but to the system which is new as of yesterday. And as a part of the application of the test we hold that a political party may use a county unit system in primary elections for the nomination of candidates in the general election if the system, as we shall point out, does not run afoul of constitutional inhibitions.

A test for invidiousness must be formulated. Unlike per se invidiousness, springing from discrimination based on race, creed or color, we must here deal with discrimination not so infected, but arising out of a state legislative classification diffusing party political strength. The diffusion is between counties of all sizes, sparsely to densely populated, apparently on a rural-urban basis, but weighted from top to bottom, county by county, in favor of the next smaller.

We make the test on a consideration of all relevant factors, and these include rationality of state policy. See the concurring opinion of Mr. Justice Clark in *Baker v. Carr* where the dismissal of the appeal in *South v. Peters*, supra, was said to reflect the viewpoint of the Supreme Court "to refrain from intervening where there is some rational policy behind the State's system."

[fol. 233] Another test is whether or not the system is arbitrary. The right of plaintiff in this connection depends upon the treatment accorded his unit. His unit, Fulton County, must be related to the state as a whole in measuring his right, and his right is the same as that of all other Democrats in his unit. The fact that Echols or some other small county receives more than its share is of no concern to Fulton County so long as it is accorded proper treatment. And the consideration of this factor includes the applicability of the diffusion principle—the right of a state to properly diffuse "political initiative as between its thinly populated counties and those having concentrated masses, in view of the fact that the latter have practical opportuni-

ties for asserting their political weight at the polls not available to the former. The Constitution—a practical instrument of government—makes no such demand on the states.” *MacDougall v. Green*, *supra*, at page 284. We have considered too the genesis of the System, whether or not it was for a fair purpose in the beginning—that it was is self-evident from the history heretofore set out.

Another important factor to be considered in making the test is whether or not the unit system has a historical basis in our political institutions, both federal and state. The primary in Georgia and elsewhere simply took the place of the convention. The county units took the place of county delegates. Counties were governmental units in Georgia before the Union and had their voice in the councils of government on the state level through representation, rationally apportioned, first on number of electors and later on population, but never in any exact proportion. And for many years governors were elected by these representatives. With the advent of popular elections of the governor and other state officials, conventions with delegate strength by party rule based on county apportionment in the House [fol. 234] of Representatives became the medium of nomination. Delegates were elected, not by direct primary, but at county mass meetings. This was followed by the county primary for the election of delegates—still in the ratio of legislative apportionment, and later by statewide primaries but still by party rule. And this finally became the statutory mode—as in the statute under attack here.

The national conventions of the great political parties use the congressional apportionment formula to a large extent in arriving at delegate strength. This gives some of the smaller states an advantage over the larger states and other factors, for example—the extra delegate bonus for party loyalty in past elections—cause a variance from exact apportionment.

The electoral college is not in exact proportion to population or voting strength but gives an advantage to the smaller over the larger. Recognizing that the electoral college was set up as a compromise to enable the formation of the Union among the several sovereign states, it still could hardly be said that such a system used in a state

among its counties, assuming rationality and absence of arbitrariness in end result, could be termed invidious. See Wilmerding, *The Electoral College* (1958) for examples of inequities arising under that system. And at least one other state, Maryland, uses a County Unit System in primary elections. Rigdon, *supra*, pp. 70-73.

Another important consideration in making the test at least for the purpose of court intervention, is the presence or absence of political remedy. This lack is implicit in *Baker v. Carr*. Here we are not dealing with legislative apportionment but with the management of the state Democratic Party. Plaintiff as a Democrat is complaining of treatment received by him at the hand of other Democrats through the medium of a state statute, sponsored by a governor from his party and enacted by a legislature consisting of members of his party. A political remedy encompasses the give and take within the political arena, but we must consider it, and whether there is substantial likelihood under the existing system of plaintiff's obtaining such relief measures as may be needed to accord him his constitutional rights. We hold that there is not.

An additional factor of importance, and of which we are much aware, is the delicate relationship between the federal and state governments under the Constitution. It has long been the law that the violation in question must be clear before a federal court of equity will lend its power to the disruption of the state election processes.

The test is on the sum of all of these factors, and if the action—here the statute, complained of—offends what are thought to be fundamental political concepts, giving due regard to each factor and to the rights of plaintiff and all others in his suit as compared to the whole—the state, it must be stricken because of discrimination so excessive as to be invidious.

The Merits

The system as it existed prior to yesterday was violative of the right of plaintiff to equal protection of the laws. The system as it exists today is an improvement, and is the

result of an effort on the part of the responsible state officials and the General Assembly of Georgia within recent days to comport with sharp new legal precedents. But even the new system misses the mark in two respects: first in failing to accord the unit of plaintiff a reasonable proportion of the whole, and second in failing to accord the units representing a majority of the population a reasonable proportion of the whole. We do not strike the county unit [fol. 236] system as such. We do strike it in its present form.¹⁰

And while it may appear doctrinaire to some extent in the application of such broad constitutional rights as equal protection, *MacDougall*, supra, to state definite standards, we nevertheless, because, and only because, it is a question of much public moment, hold that a unit system for use in a party primary is invidiously discriminatory if any unit has less than its share to the nearest whole number proportionate to population, or to the whole of the vote in a recent party gubernatorial primary, or to the whole vote for elec-

¹⁰ The following table will illustrate how under the recent statute the vote of each citizen counts for less and less as the population of the county of his residence increases, this table covering only the four largest and four smallest counties in comparison with Fulton, the largest:

County Number	Name	Population	Number Unit Votes	Population per unit vote	Ratio to Fulton County
1	Fulton	556,326	40	13,908	
2	De Kalb	256,782	20	12,839	
3	Chatham	188,299	16	11,760	
4	Muscogee	158,623	14	11,330	
156	Webster	3,247	2	1,623	8 to 1
157	Glascock	2,672	2	1,336	10 to 1
158	Quitman	2,432	2	1,216	11 to 1
159	Echols	1,876	2	938	14 to 1

There are 97 two-unit counties, totalling 194 unit votes, and 22 counties totalling 66 unit votes, altogether 260 unit votes, within 14 of a majority; but no county in the above has as much as 20,000 population. The remaining 40 counties range in population from 20,481 to 556,326, but they control altogether only 287 county unit votes. Combination of the units from the counties having the smallest population gives counties having population of one-third of the total in the state a clear majority of county units.

tors of the party in a recent presidential election; provided no discrimination is deemed to be invidious under the system if the disparity against any county is not in excess of the disparity that exists against any state in the most recent electoral college allocation, or under the equal proportions formula for representation of the several states in the Congress, and provided it is adjusted to accord with changes in the basis at least once each ten years. This is a "judicially manageable standard" contemplated in *Baker v. Carr*, supra.

[fol. 237]. Due consideration has been given to delaying the entry of an injunction until the next regular session of the General Assembly in January but having recognized the constitutional right of plaintiff, we cannot fail to protect it, nor do we believe the state would want to deny it in the fall primary.

An interlocutory injunction will be entered enjoining and restraining defendants from giving application to the County Unit System by statute or party rule in any election where the allocation of units falls short of this standard.

This 28th day of April, 1962.

Elbert P. Tuttle, Circuit Judge; Griffin B. Bell,
Circuit Judge; Frank A. Hooper, District Judge.

[fol. 238]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
Civil Action No. 7872

JAMES O'HEAR SANDERS, Plaintiff,

v.

JAMES H. GRAY, as Chairman of the Georgia State Democratic Executive Committee; GEORGE D. STEWART, as Secretary of the Georgia State Democratic Executive Committee; THE GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE; THE GEORGIA STATE DEMOCRATIC PARTY; and BEN W. FORTSON, JR., as Secretary of State of the State of Georgia, Defendants.

ORDER—April 28, 1962

The defendants, their agents, employees, successors and all persons in concert with them, are hereby enjoined until the further order of this Court from conducting any party primary election or giving effect to any party primary election so far as controls the counting of votes under a county unit system in compliance with the terms of the Neill Primary Act, as amended on April 27, 1962, by the General Assembly of the State of Georgia, or according to any [fol. 239] county unit method of counting votes, whether by virtue of statute or party rule, where the allocation of units violates the standards of allocation set forth in the opinion of the Court entered this date, to-wit: A county unit system for use in a party primary is invidiously discriminatory if any unit has less than its share to the nearest whole number proportionate to population, or to the whole of the vote in a recent party gubernatorial primary, or to the vote for electors of the party in the most recent presidential election; provided, no discrimination is deemed to be invidious under such system if the disparity against any county is not in excess of the disparity that exists as

against any state in the most recent electoral college allocation, or under the equal proportions formula for representation of the several states in the Congress of the United States, and, provided provision is made for allocations to be adjusted to accord with changes in the basis at least once each ten years.

This April 28, 1962.

Elbert P. Tuttle, United States Circuit Judge; Griffin B. Bell, United States Circuit Judge; Frank A. Hooper, United States District Judge.

[fol. 240]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

NOTICE OF APPEAL TO THE SUPREME COURT OF THE
UNITED STATES—Filed May 2, 1962

I

Parties Taking Appeal and Judgment Appealed From

Notice is hereby given that James H. Gray, Chairman of the Georgia State Democratic Executive Committee; George D. Stewart, as Secretary of the Georgia State Democratic Executive Committee, The Georgia State Democratic Executive Committee, The Georgia State Democratic Party, and Ben W. Fortson, Jr., as Secretary of State of the State of Georgia, defendants in the above matter, hereby appeal to the Supreme Court of the United States from the order granting interlocutory injunction rendered after notice and hearing on April 28, 1962, by a special three-judge [fol. 241] court convened pursuant to 28 USCA 2281, enjoining defendants from enforcing and giving effect to the provisions of statutes of the State of Georgia, Ga. Code Ann. Sections 34-3212 through 34-3218, inclusive, as amended, governing primary elections conducted by political parties, and requiring that all votes cast in such primaries be consolidated and tabulated according to the county unit method as therein prescribed.

This appeal is taken pursuant to 28 USCA 1253 authorizing direct appeals from interlocutory injunctions issued by special three-judge federal courts against the enforcement of state statutes on the ground of their unconstitutionality under the federal constitution.

II

Designation of Record

The Clerk will please prepare a transcript of the record in this cause, for transmission to the Clerk of the Supreme Court of the United States, and include in said transcript the following:

1. The complaint and all amendments thereto.
2. The motion to dismiss filed by defendants.
3. The verified answer of defendants.
4. The request for admissions filed by plaintiff.
5. The answers thereto filed by all defendants.
6. Plaintiff's Exhibit 4, certificate of Fulton Registrar.
7. Plaintiff's Exhibit 8, affidavit of Gaylord.
8. Plaintiff's Exhibit 9, affidavit of Bonner.
9. Plaintiff's Exhibit 10, affidavit of Plaintiff Sanders.
10. Plaintiff's Exhibit 11, affidavit of William B. Hartsfield.
11. Plaintiff's Exhibit 12, affidavit of Gaylord.
- [fol. 242] 12. Plaintiff's Exhibit 13, affidavit of Hubert.
13. Plaintiff's Exhibit 14, affidavit of Hammer.
14. Plaintiff's Exhibit 15, certificate of Secretary of State, Registered Voters.
15. Plaintiff's Exhibit 16, certificate of Secretary of State, Registered Voters.
16. Defendants' Exhibit 1, consolidated returns.

17. The clerk will also transmit one of each of the following original documents (3 copies having been filed with the court by plaintiff):
 - (a) Plaintiff's Exhibit #1, U. S. Census, Population, Georgia, Number of Inhabitants
 - (b) Plaintiff's Exhibit #2, U. S. Census, Population, Georgia, General Characteristics
 - (c) Plaintiff's Exhibit #3, U. S. Census, Population, Georgia, General Social Characteristics
 - (d) Plaintiff's Exhibit #5, Report of State Auditor of Georgia 1961
 - (e) Plaintiff's Exhibit #6, Statistical Report of Department of Revenue
 - (f) Plaintiff's Exhibit #7, Rules of Democratic Party of Georgia, 1962
 - (g) Defendants' Exhibit #2, Census, Population of Georgia counties 1910 to 1960.
18. The decision of this Court and order granting interlocutory injunction rendered April 28, 1962.
19. This notice of appeal
20. Plaintiff's Exhibits #17 and #19, affidavits of Wilson Brooks and Leslie Gaylord, respectively.
21. Order convening a three-judge court
22. Plaintiff's Exh. 20.

III

Questions Presented

1. Whether the provisions of Georgia Code Ann., Sections 34-3212 through 34-3218, inclusive, as amended, requiring that votes cast in primary elections conducted by political parties for nomination of candidates for state office and United States Senator, deny to plaintiff the equal protection of the laws guaranteed by the Fourteenth Amendment to the Constitution of the United States.

[fol. 243] 2. Whether or not said statutes, as applied to primary elections conducted by political parties for nomina-

tion of candidates for the office of United States Senator, are unconstitutional as being in violation of the Seventeenth Amendment to the Constitution of the United States.

3. Whether or not the special three-judge district court erred in granting the interlocutory injunction.

4. Whether or not said court erred in not sustaining defendants' motion to dismiss.

5. Whether the constitutional adjudication here was premature in view of the fact that on the same day that this case was heard the statute under attack was amended so as to require that in any event before a candidate could be declared the nominee of the party as a result of the first primary he must not only receive a majority of the county unit votes, but also a majority of the popular votes cast.

6. Whether a state, consistently with the 14th and 17th Amendments, may insure an adequate diffusion of electoral power so as to achieve a reasonable balance between rural and urban areas.

Eugene Cook, Attorney General of Georgia; B. D. Murphy, Deputy Assistant Attorney General; E. Freeman Leverett, Deputy Assistant Attorney General; Attorneys for Defendant Ben W. Fortson, Jr., Secretary of State; Lamar W. Sizemore, Attorney for Defendants Gray, Stewart, State Democratic Executive Committee and State Democratic Party.

[fol. 244] Stipulation as to Designation of
Record on Appeal

The undersigned, counsel for the respective parties, hereby stipulate pursuant to Rule 12 (3) of the Revised Rules of the Supreme Court of the United States that the record and proceedings designated in the foregoing notice of appeal shall be the portions of the record transmitted to the Clerk of the Supreme Court of the United States. It is further stipulated that either of the parties may refer to or reproduce in briefs any other portion of the record not desig-

nated or transmitted, and that either of the parties may cite in their briefs or otherwise insert in the record the allocation of unit votes received by each county under the 1962 Amendment to the Georgia Statutes, also, either party may refer to any volume of the Georgia Official and Statistical Register.

This May 1st, 1962.

Heyman, Abram, Young, Hicks & Maloof, Maurice N.
Maloof, Attorney For Plaintiff,
E. Freeman Leverett, Attorney for Defendants.

ORDER AS TO TRANSMITTAL OF ORIGINAL PAPERS

Pursuant to Rule 12 (4) of the Revised Rules of the Supreme Court of the United States, the Clerk of this court is hereby directed to transmit to the Clerk of the Supreme Court of the United States, the original papers as designated in Item 17 of Division II of the foregoing notice of appeal, said original papers to be returned to this court upon termination of the cause.

This May 2, 1962.

Elbert B. Tuttle, Judge, United States District Court.

[fol. 245] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

MOTION BY DEFENDANTS FOR STAY PENDING APPEAL—
Filed May 1, 1962

Come now defendants and move for a stay of the decree of this court rendered April 28, 1962, granting interlocutory injunction against defendants, and by way of grounds therefor, show as follows:

1.

Defendants are filing herewith a notice of appeal to the United States Supreme Court pursuant to 28 USCA

1253, seeking review and reversal of this court's interlocutory injunction granted April 28, 1962.

2.

Defendants show that they are moving with all possible diligence, and expect to have said case docketed in the Supreme Court, and jurisdictional statement filed therein within less than two weeks, and that defendants expect to file motion to advance so that said case may be heard and determined [fol. 246] prior to adjournment of the term.

3.

Defendants further show that the effect of the interlocutory decree entered April 28, 1962, is to enjoin the holding of a primary election for Governor, State House Officers and United States Senator in 1962 in a manner heretofore followed in Georgia by custom and practice for over 100 years, and by statute for over 40 years; that said primary is now set to be held on September 12, 1962; that substantial questions are involved in this appeal which have been previously considered only on one prior occasion by the Supreme Court, and on said occasion said question was decided in favor of the contention now urged by defendants, to wit, that a state may assure a proper diffusion of political power between its thinly populated counties and those having concentrated masses, *MacDougall v. Green*, 335 U. S. 281, 284 (1948); and that until said issue is finally determined in this case by the United States Supreme Court, the presumption of constitutionality accorded all states statutes, together with the rule that federal injunctive power should be sparingly exercised in state elections, *Wilson v. North Carolina*, 169 U. S. 586, 598 (1898), require that the interlocutory decree of this Court be stayed pending appeal.

Wherefore, defendants pray that this their motion be sustained, and that a stay be granted pending appeal pursuant to Rule 62, Fed. Rules Civ. Proc.

Eugene Cook, Attorney General of Georgia; B. D. Murphy, Deputy Assistant Attorney General; E. Freeman Leverett, Deputy Assistant Attorney General; Attorneys for Defendant Ben W. Fortson, Jr., Secretary of State; Lamar W. Sizemore, Attorney for Defendants Gray, Stewart, State Democratic Executive Committee and State Democratic Party.

[fol. 247]

[File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

OPPOSITION TO MOTION BY DEFENDANTS FOR
STAY PENDING APPEAL—Filed May 2, 1962

The plaintiff opposes the motion by defendants for stay pending appeal on the following grounds:

(1)

The stay requested is either unnecessary or its necessary effect would be to deprive the plaintiff of his constitutional rights which the Court has previously adjudicated.

(2)

The stay is not necessary to afford the defendants a right of appeal. This is a case in which a direct appeal may be made to the United States Supreme Court, which Court is now in session and will remain in session until sometime in June (Hartsfield v. Sloan, 357 U.S. 916, commenced in April, 1958, was decided as late as June 16, 1958). If that Court believes that there is merit in the appeal of defendants, it may grant a motion to advance and decide the appeal well before the date on which the injunction entered would have any effect upon the defendants whatever. If, [fol. 248] on the other hand, the Supreme Court believes that there is no merit in the defendants' appeal, a stay entered by this court could have the effect of denying to the plaintiff the rights which the Court adjudicated were his on April 28, 1962.

(3)

This Court has recognized the fact that in this case delay in the granting of relief is a denial thereof. In its opinion of April 28, 1962, the Court states:

"Due consideration has been given to delaying the entry of an injunction until the next regular session of the General Assembly in January but having recognized the constitutional right of plaintiff, we cannot fail to protect it, . . ."

Wherefore, plaintiff prays that the motion by defendants for stay pending appeal be denied.

Heyman, Abram, Young, Hicks & Maloof, By Morris B. Abram, Maurice N. Maloof, Attorneys for Plaintiff.

Service omitted.

Filed May 2, 1962.

[fol. 249]

IN THE UNITED STATES DISTRICT COURT

ORDER DENYING MOTION FOR STAY—May 4, 1962

After hearing argument of counsel on the motion of defendants for stay pending appeal,

It Is Considered, Ordered and Adjudged that said motion is hereby overruled and denied.

This 4th day of May, 1962.

Elbert P. Tuttle, United States Circuit Judge; Griffin B. Bell, United States Circuit Judge; Frank A. Hooper, United States District Judge.

Filed May 4, 1962.

[fol. 250] Clerk's Certificate to foregoing transcript (omitted in printing).

[fol. 251]

SUPREME COURT OF THE UNITED STATES

ORDER NOTING PROBABLE JURISDICTION AND DENYING
MOTION TO ADVANCE—June 18, 1962

Appeal from the United States District Court for the
Northern District of Georgia.

The statement of jurisdiction in this case having been
submitted and considered by the Court, probable jurisdic-
tion is noted. The motion to advance is denied.

June 18, 1962

Mr. Justice Harlan would note probable jurisdiction and
deny the motion to advance, with leave to the appellants to
apply to this Court for a stay of the injunction order of the
District Court pending determination of this appeal.

Mr. Justice Frankfurter took no part in the consideration
or decision of this case.

MAY 11 1962

JOHN E. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No. ~~959~~ 112

JAMES H. GRAY, as Chairman of the Georgia State
Democratic Executive Committee;
GEORGE D. STEWART, as Secretary of the Georgia State
Democratic Executive Committee;
THE GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE;
THE GEORGIA STATE DEMOCRATIC PARTY, and
BEN W. FORTSON, JR., as Secretary of State of the
State of Georgia,
Appellants,

vs.

JAMES O'HEAR SANDERS,
Appellee.

Appeal from United States District Court for the Northern
District of Georgia, Atlanta Division.

**MOTION TO ADVANCE AND STATEMENT
AS TO JURISDICTION.**

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Attorney for Appellants,
Gray, Stewart, State Dem-
ocratic Executive Com-
mittee and State Dem-
ocratic Party.

McGowan v. Maryland, 366 U. S. 420, 6 L. Ed. 2d 393 (1961)	14
Oklahoma Gas and Electric Co. v. Oklahoma Packing Co., 292 U. S. 386, 78 L. Ed. 1318 (1934)	7
Palmetto Fire Ins. Co. v. Conn. 272 U. S. 295, 305, 71 L. Ed. 243 (1926)	7
Radford v. Gary, 145 F. Supp. 541, 546 (D. C. Okl. 1956), aff'd 352 U. S. 991 (1957)	14
Remmey v. Smith, 102 F. Supp. 708, 712 (D. C. Pa. 1951) app. dismissed, 342 U. S. 916 (1952)	14
Salsburg v. Maryland, 346 U. S. 545, 551, 98 L. Ed. 281 (1954)	14
Scholle v. Hare, 360 Mich. 1, 104 N. W. 2d 63, 93 (1960), remanded, 30 L. W. 3332 (1962)	14
South v. Peters, 89 F. Supp. 672 (D. C. Ga. 1950), affirmed, 339 U. S. 276 (1950)	2, 13, 14
Turman v. Duckworth, 68 F. Supp. 744 (D. C. Ga. 1946), app. dism. 329 U. S. 675 (1946)	2, 13
United States v. Classic, 313 U. S. 299, 85 L. Ed. 1368 (1941)	15

Statutes Cited.

Georgia Code Ann., Sections 34-3212 through 34-3218	6, 7, 9, 10, 12
Georgia Laws 1961, p. 111	11
Georgia Laws 1962, p. 15	9
28 U. S. C. A., Section 1253	7
28 U. S. C. A., Section 2281	2, 5, 7
28 U. S. C. A., Section 2284	2, 7

Constitutions Cited.

Constitution of Georgia:	
Art. III, Sec. IV, Par. II	9
Art. V, Sec. I, Par. II	9

Art. III, Sec. III, Par. I	11
Art. III, Sec. III, Par. II	11
Constitution of the United States:	
• Fourteenth Amendment	6, 7, 8
Seventeenth Amendment	6, 7, 8, 12, 15

Miscellaneous Cited.

The Federalist, No. 10	14
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IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1961.

No.

**JAMES H. GRAY, as Chairman of the Georgia State
Democratic Executive Committee;
GEORGE D. STEWART, as Secretary of the Georgia State
Democratic Executive Committee;
THE GEORGIA STATE DEMOCRATIC EXECUTIVE COMMITTEE;
THE GEORGIA STATE DEMOCRATIC PARTY, and
BEN W. FORTSON, JR., as Secretary of State of the
State of Georgia,
Appellants,**

vs.

**JAMES O'HEAR SANDERS,
Appellee.**

Appeal from United States District Court for the Northern
District of Georgia, Atlanta Division.

MOTION TO ADVANCE.

To the Honorable Earl Warren, Chief Justice, and The
Associate Justices of the Supreme Court of the United
States:

Come now Appellants and move the court to advance
consideration of the appeal of Appellants in the event that
probable jurisdiction is noted, and to assign said matter
for a special hearing at such early date during the present
term as may be convenient, and by way of grounds there-
for, show as follows:

1.

The appeal here is from an interlocutory injunction
rendered by a special three-judge district court convened

pursuant to 28 U. S. C. A., Sections 2281, 2284, declaring unconstitutional Georgia statutes governing primary elections conducted by political parties, and enjoining Appellants from enforcing and giving effect to said statutes in the Democratic primary set to be held September 12, 1962; for nomination of candidates for Governor, United States Senator, and other state house offices.

2.

The complaint below was filed March 26, 1962, heard by the court on April 27, 1962; and decision and decree were rendered therein on Saturday afternoon, April 28, and Appellants herein acted with all due diligence and dispatch by filing notice of appeal and stipulation as to record on appeal on May 1, 1962.

3.

Notwithstanding the diligence of Appellants as hereinbefore shown, the case is in danger of becoming moot through no fault of Appellants, in that unless this court acts without delay, the primary now set for September 12 will be held, if at all, under the court decree hereinbefore referred to, in a radical manner contrary to that prevailing in Georgia by custom and practice for over 100 years, and by statute for over 40 years.

4.

The decision of the court below is directly contrary to two prior decisions of special three-judge federal courts in **Turman v. Duckworth**, 68 F. Supp. 744 (D. C. Ga. 1946), app. dismissed, 329 U. S. 675 (1946); and in **South v. Peters**, 89 F. Supp. 672 (D. C. Ga. 1950), affirmed, 339 U. S. 276 (1950). Moreover, subsequent to the above decisions, and on the same date that this case was heard, the General

Assembly of Georgia amended the statutes in question so as to accord the more populous counties a greatly increased percentage of the county unit votes throughout the state, thereby rendering said statutes more immune from constitutional attack than when the two decisions hereinbefore referred to were rendered.

5.

Appellants show that the hearing in this case occupied all of the day of April 27, and was not terminated until after 5 o'clock P. M., notwithstanding which the 28 page decision and decree was rendered the following day at 2 o'clock P. M., at which time some 15 or more copies had already been prepared for distribution to the news media.

6.

The questions involved in this case are substantial, and are of the utmost importance to the State of Georgia. The nature of the issues, the summary treatment accorded below, the fact that the statutes in question were upheld on two previous occasions by three-judge federal courts after much more study and deliberation, all require that this case be considered on the merits before mere lapse of time thwarts the state policy and renders moot what may well be one of the most significant issues to come before this court in many years.

Wherefore, Appellants, Movants herein, pray:

1. That probable jurisdiction be noted without delay.

2. That the Court advance consideration of the Appeal for oral argument to such convenient date during this term as will enable final disposition thereof in

sufficient time prior to September 12 so as to enable responsible officials to be properly apprised of the manner in which said primary may be conducted.

Respectfully submitted,

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ecutive Committee and State
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